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SESSIONS CASES ADJUDGED IN THE COURT OF KING'S BENCH.

SESSIONS CASES

ADJUDGED IN THE

COURT OF KING'S BENCH,

CHIEFLY TOUCHING

SETTLEMENTS,

FROM THE LATTER END OF QUEEN ANNE'S REIGN TO THE PRESENT TIME.

With Two Tables,

THE ONE OF THE NAMES OF THE CASES, THE OTHER OF THE PRINCIPAL MATTERS THEREIN CONTAINED.

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PREFACE TO THE ORIGINAL EDITION.

THE following Cases were the Collection of an eminent Barrister deceased; and as most of them are entirely new, so it is apprehended, from the usefulness of the matter about which they chiefly treat, namely the Settlements relating to the Poor, they will be of great benefit; which is apparent from the general approbation treatises of this sort have met with; and it is not doubted but that this work will merit regard; the Cases being taken more fully than former Collections of this kind have been, and the most eminent of the law of the present age concerned in the greatest part of them; of whom we humbly ask pardon, if the determinations and arguments fall short of that beauty and energy of expression, with which they were graced when delivered; being sensible that in most instances the substance is only retained; but we have kept close to our Author's Manuscript, without any alteration or addition, except in the Table of the Principal Matter added at the end of the Book, and the Contents of each Case set forth in the Margin,* that the reader at once may be apprized of the Subject Matter thereof; which was done with a view to render the work as complete and useful as possible; and it is hoped that the defects and imperfections therein will meet with excuse, as we are deprived of the assistance of the author to introduce them to the public; to whom if they shall appear useful, the Editor will have the satisfaction of attaining the end desired by the publication.

* The marginal references have been omitted in the present edition

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SESSIONS CASES, ETC.

Michaelmas, Ninth of Queen *Anne.*

The Queen *against* The Inhabitants of Middleham.

AN Order was made to remove *John Davery* a Child of ten Years old, Son of *Francis Davery*, to the Parish of ——— for that it appeared that the last Settlement of *Francis* was at the said Parish. The Order was quashed; for when it appears that the Child is two or three Years old, the last Settlement of the Father is the Settlement of the Child; but when the Child is of an Age as by Possibility might have gained a Settlement, as by being bound Apprentice, there must be an Adjudication of the Child which is not here.

Where there is a special Undertaking of the Father to pay for the Infant's boarding, etc. the Infant is not chargeable.

The same Term.

St. Mary *against* St. Lawrence, Reading.

A. LIVING in the Parish of *St. Lawrence* is elected Warden, which is in the Nature of Tithing-Man for the Borough at the Court-Leet.

The Question was, whether by executing this Office for the Borough he gained a Settlement in the Parish of *St. Lawrence?*

Mr. Justice *Parker* seemed to think that this was not a Parochial Office within the Intent of the Act, and compared it to the Case of *St. Michael's Cornhill*, where it was held, that paying the Scavenger's Rate did not gain a Settlement, because it was not a Parochial Rate, and if the Rate is not Parochial, the Office is not; as for a Constable, or Tithing-Man which is in the Nature of a Constable, they do certainly gain a Settlement; and though the Power of a Constable in *London* does extend beyond his own Parish, yet that is by Custom, for he is elected Constable of that Parish only, but here *A.* is elected Warden for the Borough.

The three other Judges seemed to be of a different Opinion; and Mr. Justice *Eyre* said, there was a Difference between paying to a Scavenger's Rate, and executing the Office; for a poor person who is concealed in the Parish, may be taxed and pay to the Rate privately, without the Knowledge of any of the Parishioners, therefore unreasonable it should gain a Settlement: But when a Man executes such an Office in a Parish, it is notorious to the Parish, and though the Office may extend to other Parishes, yet 'tis an Office in that Parish.

Mr. Justice *Powell* said, the Word *Town* in the Act was impertinent, if it must be only a Parochial Office can give a Settlement; the Words are *if he shall execute any office in a Parish or Town.*

Mr. Justice *Parker* said, that the Act did not always intend Notoriety, for a Person might

be privately assessed by the Overseers of the Poor, yet this being a Parish Duty did gain a Settlement; if a Person was hired and lived a Year in a Service, this gains a Settlement, and yet this may be very private; but when upon a reasonable Judgment the Party was likely to get his living, and not to become chargeable to the Parish, he had then gained a Settlement: As to the Word *Town*, that could never be intended of such a Town as *Reading*, where there are several Parishes; for at that Rate he might, by executing the same Office, gain a Settlement in every Parish in *Reading* by removing from one Parish to another; that must be intended where there are two or more Towns in one Parish, and each Town provides for its own Poor, and elects its own Officers; then Executing an Office in such Town does gain a Settlement in such Town.

The same Term.

Parish of Beaton *against* Southgatebury.

AN Order made by two Justices, upon an Appeal to the Quarter-Sessions, is generally set aside without shewing any Cause: Mr. *Carle* moved to quash the Order of Sessions for not specifying the Reasons, because though the Order of Justices might be set aside only for want of Form, yet this general Order was a Bar to them from making another; he said it had been so adjudged.

The Court agreed it was not necessary for them to shew any Cause, for they were Judges; *if the Order was set aside for want of Form, you should have moved them to specify that as a Reason, and if they had refused it, we would have compelled them to it;* but no Reason appearing we must conclude it was set aside on the Merits of the Cause. Afterwards Mr. *Carle* brought two Precedents in Point, which the Court did not approve of, but held the Order of Sessions need not give any Reason, and was therefore to be confirmed; yet it appearing that the Original Order was insufficient, they inserted in their Rule, that the Order of Sessions should be confirmed, because the Original Order was insufficient; so that by this Rule they might make a new original Order.

Mr. Justice *Eyre* against such Order; for he said if the Merits of the Cause were determined at the Sessions, 'tis unreasonable it should be disputed.

Mr. Justice *Powell:* A Determination of the Merits upon an insufficient Order is no Determination.

The same Term.

Anonymus.

AN Order of Sessions recites, that upon due Notice, and after hearing the Allegations, Differences and Proofs, of the Parish Officers of both Parishes, they remove *A*. This Order was quashed; for here does not appear to have been any Complaint, and the Justices have no Jurisdiction without a Complaint; for they cannot make an Order to remove a Man *ex officio*.

The same Term.

Rugwick *against* Dunsfold.

HILL. 10 *W. Stephenton* against *Overton*, it was held that where a Man was hired for Half a Year which he served, then hired for a Year of which he served Half, it gained a Settlement, for here was, according to the Words of the Statute, Hiring for a Year and Serving for a Year by two Halves. The present case is, *A*. was hired for a Quarter which he serves, then hired for Half a Year which he serves, then hired for another Half Year which he serves, this the Court held not within the Statute; for if you unite the Service, the Hiring is not for a Year, as 'tis in the other Case; but they much doubted of the other Case, and seemed to be of Opinion, that the Service as well as the Hiring should be intire. *Salk.* 535.

The same Term.

Bishops Waltham *against* Farram.

JUSTICES make an Order to remove one *Sweetapple* to *B.* Inhabitants of *B.* Appeal to the Quarter-Sessions, there the Order is set aside; then by Order of two other Justices he is sent again to *B.* which is confirmed at Sessions, but quashed here; for after the Order for sending him to *B.* was quashed, they cannot send him there by a new Order.

The same Term.

Anonymus.

AN Order of Sessions quashed, because the Justices therein adjudge the Party to be last settled at *Woosam*, and order him to be carried to *Walsam.*

The same Term.

Anonymus.

AN Order of Sessions quashed, because it set forth, that by a Certificate under the Hands of the Churchwardens, etc. *Douglas* was likely to become chargeable to the Parish of *B.* whereas by the Act 8 and 9 *W.* no Person settled according to that Act can be removed till he does actually become chargeable.

The same Term.

Parish of Hunniton *and* St. Mary Arches.

A. PROCURES a Certificate from the Parish of *B.* according to the Statute 8 and 9 *W.* by Virtue of which he is admitted into the Parish of *D.* but proving chargeable he is sent back again to *B.* they, under Pretence he had never gained a legal Settlement with them, by Order of Justices, send him to *C.* where they pretend he was last legally settled.

Sir *Peter King* moved to quash this Order, because such Certificate given by *B.* is not a legal Settlement within 9 and 10 *W.* which says that nothing shall be deemed a legal Settlement but Renting a Tenement at 10*l. per Ann.* or Executing some Parish Office, yet such Certificate is an Estoppel to the Parish of *B.* from saying he was not legally settled with them, and refusing to admit him again. *Salk.* 530, 535.

Trinity, Ninth of Queen *Anne.*

The Queen *and* Brambley.

TO quash an Order of Sessions (made upon Complaint of the Churchwardens) to commit *B.* to Prison till he finds Sureties to keep the Peace with his Wife, and provide for her.

By the Court: If he beats his Wife she has her Remedy; the Churchwardens cannot take notice of it; if he do not provide for her, and she becomes chargeable to the Parish, the Justices may make an Order for him to pay such a Sum of Money to indemnify the Parish, but cannot imprison him.

The same Term.

Rostem *against* Flixton.

AN Order of Sessions was made to remove a Woman and her five Children from the Parish of *Flixton* to the Parish of *Rostern.* Moved to quash the Order, for *non constat* which of the Woman's Children, what their Names were, whether under seven Years old, or else they cannot be removed with their mother.

Court: An Order of Sessions is in Nature of a Judgment, and must be certain; this Woman, for ought appears, may have twenty Children.

Then Sir *Edward Northey* moved to quash the *Certiorari* for Variance from the Order, *Roshtern* and *Rostem*, and *Tlixton* and *Flixton;* but being *similis sonus* was not allowed.

The same Term.

Queen *and* Chapman.

TWO Justices make an Order that *Chapman* shall pay the Overseers of the Poor 5*l.* for putting out a Bastard Child Apprentice; the Child puts himself out, the Justices at the Sessions make an Order that the Overseers shall pay 4*l.* of the 5*l.* to his Master, and the remaining 20*s.* to a Stranger, for the Use of the Lad.

By the Court: The Sessions have no Power to make such an Order; the Matter referred to the Judges of Assize.

The same Term.

Queen *against* St. Michael's Cornhill.

THE Question was, whether paying Scavenger's Rate in the City of *London*, was a Parish Duty and gained a legal Settlement within the Act.

By the Court: It is not, for the Scavengers are elected at the Wardmote; the Rate is assessed by the Common Council of the City; the Aldermen and Common Council of the Ward appoint Commissioners, who send order to any Scavenger in a Precinct, to collect for that Precinct, which may contain several Parishes and Pieces of a Parish, so that it cannot be a Parish Duty, no more than the Queen's Tax, both which are Parish Duties in the Country.

The same Term.

Queen *against* Inhabitants of St. John.

MR. *Raymond* moved to Quash an Order of Justices to remove a Child of a Year old. The first Exception was, that she is likely to become chargeable, not saying to the Parish; secondly to remove her to *St. John* in *Peterborough*, which was the Place of her last legal Settlement, she being born there, which he said is not sufficient to gain a Settlement.

Michaelmas, Tenth of Queen *Anne.*

Parish of Spittlefield *against* Bromley.

J. L. was sent by Order of Justices to *Spittlefield* as the Place of his last legal Settlement; they without appealing to Sessions send him to *Bromley* by Order of two Justices likewise; and it was moved to quash this last Order, because they cannot send him from them by Order of two Justices, but must appeal to the Quarter-Sessions, as was adjudged in the Case of *St. Andrews, Holbourn.* Quashed unless Cause.

The same Term.

Forty *against* Beaufere.

FOR a Prohibition the Churchwardens set forth in their Libel, that whereas there was a standing Rate in the Parish, which was 10*d. per* House, for Parish Expences, they did by Consent of the Majority of the Parish make an Order, that thirteen such Rates should be collected for Parish Expences, six of which should go towards Building a Gallery in the Church. Mr. *Salkeld* and Sir *Peter King* argued, that it has been often adjudged in this Court, that there cannot be a standing Rate in a Parish; secondly, that the Majority of a Parish cannot

bind the rest to build a Gallery; for they can only bind them for such Things as they are subject to by Common Law, and presentable to the Bishop for not doing.

Court: Churchwardens cannot make a standing Rate *pro omnibus temporibus*, or to bind their Successors, because Circumstances may alter; and though it was, when made, an equal Rate, it may become unequal; but this is a new Rate or Assessment after the Model of the old Rate, and is the very same as if they had said thirteen Times 10*d.* for they only refer to the old Rate for the Sum. Secondly, before the Reformation few Churches had any Pews in them, yet they have been since thought necessary, and the Parish is chargeable with them; so that if there are not Pews sufficient in the Body of the Church, they are chargeable with Galleries; they are not presentable for it, but for not repairing Bells they are.

The same Term.

Plimpton St. Maurice *against* Plimpton Morris.

THE Overseers of the Poor for the first Parish complain, that *A.* had intruded in their Parish, with the usual Suggestion, and desire he may be removed; the Justices refuse to make any Order.

Sir *Edward Northey* moved for a *Mandamus* to oblige them to make such Order (*si ita sit*), or if he has gained a Settlement in the Parish, and they cannot remove him, to return it to the *Mandamus*. Mr. Justice *Powell* said, that if Justices would not execute their Duty, they could oblige them to it, and was inclined to grant a *Mandamus;* but Lord Chief Justice and Mr. Justice *Eyre* said, that if the Justices make a false Return, though by Mistake, they were liable to an Action, which subjected them to an unreasonable Vexation; besides if they do not see fit to make an Order of Removal, they cannot make any other Order.

Mr. Justice *Powell*, upon reading the Statute, which says, (Justices upon such Complaint may remove such Persons) was of the same Opinion as to the Suggestion, that the Justices were Inhabitants of the last Parish, and therefore refused to make such Order; the Court will not presume that the Justices would act contrary to their Duty; besides there are Justices enough in the County who are of neither Parish.

Easter, Tenth of Queen *Anne.*

Queen *against* Parish of St. Giles.

JUSTICES make an Order to send an Infant from the Parish of *R.* to the Parish of *St. Giles;* because it appears that though the Father was last settled at *R.* yet the Child was born at *St. Giles's*, this Order was confirmed at Sessions, but now quashed; for the place of the Settlement of the Child is with the Father, and not the Place where the Child was born; but if it cannot appear where the Father was settled, the Place of its birth shall be the Place of Settlement.

The same Term.

Anonymus.

ORDER at Sessions upon Complaint of *A.* that her Husband had made over all his Estate to his Son, and was run away. The Justices at Quarter-Sessions order two Justices of that Division to examine into the Matter, who certify that it is true; upon which Certificate they make an Order, that for as much as the Husband has made over his Estate in Trust to his eldest Son who was dead, and this second Son was his Executor, they order him to allow 8*d. per* Week to *A.*

Mr. Justice *Powell* said this was more like a Decree in Chancery than an Order. Quashed.

The same Term.

Parish of Denton *against* Stoke-Lane.

A. IS born in *D.* then is a Covenant Servant in *B.* which is a Place Extraparochial, then came into *T.* The Justices at Sessions make an Order, that if the Court of *King's Bench* think him last settled in *D.* we send him to *D.*

By the Court: This Order must be quashed; for though it was only for their Opinion, yet the Justices should have made a positive Order, and the Court by Quashing or affirming that Order, would give their Opinion.

Lord Chief Justice seemed to think, that if a Man could gain a Settlement in an Extraparochial Place, yet they could not send him there by this Act, because this Act cannot be executed in such a Place; for the Act says, the Party shall be delivered to the Overseers of the Poor, and they to take care of him; but here can be no Overseers of the Poor, for an Extraparochial Place can have no Officers, neither can they send him to *D.* because that is not the Place of his last legal Settlement, having gained a Settlement since in *B.*

Mr. Justice *Powell* said, this would put it in the Power of every Person living in a Place Extraparochial to intrude into what Parish he pleases. Adjourned.

The same Term.

Queen *against* Rutter.

AN Order of Sessions upon 5 *Eliz. c.* 4. for removing an Apprentice; the Order was, that upon the Petition of *Paine*, it did appear that he had put himself an Apprentice to *R.* who not having Business enough to instruct him in his Art according to his Agreement, and P. complaining of it, he did beat him with a Periwig Block, upon which he complained to a Justice, who bound him over to appear at the next Sessions, where not appearing, the Court sent him a Summons; but not appearing upon that, they made an Order for removing his Apprentice, and that he should pay him back 5*l.*

Sir *James Mountague* argued, that the Master is not bound over upon Complaint of the Apprentice, that he was not able to teach him his Trade, but for beating him; that by the Act the Justices cannot make such an Order, unless the Master is present; that whereas it was objected that he had not sufficient Business to teach him the Art of making Periwigs, that was an Art unknown at the time of the Making the Act.

Mr. *Darnell* argued, that this Recognisance shall be taken for one Matter, as well as for the other; or at least when he is bound to appear once, he need not be bound to appear again at the same Sessions.

Parker and *Eyre* Judges held, that this Statute had been stretched too far already; for they could not see that the Justices had any Authority to remove Apprentices who were bound voluntarily, but those only whom the Justices had obliged to bind themselves within this Act; neither did the Act give them any Power to order the Master to repay any of the Money, which is an Argument the Act intended only to give them Power over such Apprentices as gave no Money; for it is very reasonable, that when an Apprentice is removed for being misused by his Master, the Master should pay back Part of the Money; but their Authority being settled by several adjudged Cases, they would not shake them, neither would they extend the Act in any other Case further than the Words of it, for that was to make Laws, and not to expound them; therefore they thought it absolutely necessary that the Party should appear at the Sessions; as for the Practice of the Sessions being otherwise, that is a wrong Practice; for the Sessions have not an original Jurisdiction to proceed upon the Petition of an Apprentice, but a special Authority, which they must pursue strictly, and the Master and the Apprentice must come before a Justice, who, if he cannot make up the Matter, must bind them over; but if the Master do not appear, though he is beyond Sea or in Prison, the Apprentice cannot be discharged, but the Recognisance of the Master

must be estreated. In making Order for removing a poor Person it is not necessary that he be present, because not in the Act, but a Complaint is necessary for that is directed. *Powell* and *Powis* Judges agreed, that the Presence of the Person was necessary.

The same Term.

Bishops Waltham *against* Farram.

MR. Solicitor General shewed Cause why the Order should not be quashed, because it did not appear that the first Order was quashed upon the Merits of the Cause, or for want of Form, and then they might make a new Order; if it was upon the Merits, the Justices should have said so in their Order. The Court held that the Justices at Sessions have no Power but to quash or affirm without giving any Reason; that it shall be supposed to have been upon the Merits of the Cause, unless the contrary appear; but this second Order being made six Months after the first was quashed, the Person may have gained a Settlement in *F.* since that Order was quashed.

N.B. Videtur nobis, or *do believe to be true*, was held a good Adjudication.

The same Term.

St. Giles Cripplegate *against* St. Mary Newington.

THE Question was, whether Paying to the Scavenger's Rate in the Parish of *N.* which was divided into four Hamlets, each of which made and collected a Scavenger's Rate for themselves; they all agreed the Scavenger's Rate was made a Parochial Duty by the Act of Parliament, which directs that it shall be assessed in the Presence of the Churchwardens by the Inhabitants of the Parish, and that paying to this Rate shall gain a Settlement.

The Judges *Parker*, *Powell* and *Powis* agreed, that though this Rate was not assessed according to the Directions of the Act, yet it was by the Consent of the whole Parish, and continues still to be a Parish Duty; and though if it was refused by any inhabitant, it would be difficult to levy it; yet when they had paid it shall gain a Settlement, or else it will be in the Power of every Parish to avoid this, which is made a Settlement by Act of Parliament, only by making a Rate contrary to the Direction of the Act.

Mr. Justice *Eyre* said, he thought that when an Act has given particular Directions how a Rate shall be assessed, as in the Presence of the Churchwardens and Constables by the Parishioners, they ought to be kept strictly to it, and not suffered to make a Rate according to their own Humour, and that such a Rate did neither bind the Inhabitants nor gain a Settlement. Adjourned.

The same Term.

Anonymus.

ORDER to send *A.* and his three Children to *Homsworth*, because it doth appear that he was hired as a Servant in *H.* and served there for a year. It was objected that it does not appear that he was hired for one Year, which the Act requires; but that he served for one Year, and therefore the Reason upon which the Act is founded is not good. The Court said that Justices are not obliged to give any Reason for their Order, yet if they do give a Reason which appears to be ill, they will quash it, but where it does not appear to be ill, they will not intend it.

N. B. Cannot appoint a Woman to be a Parish Officer, except where there is a Custom for every Householder to execute such an Office by Turns, then a Woman may be appointed to execute by Deputy.

Lothbury *against* St. Peters.

AN Order is made to remove a Person from *Lothbury* to *St. Peters;* they appeal; the original Order quashed: Moved to quash the Order of Sessions, because it recites, that

upon the Appeal of the Inhabitants of *St. Peters*, whereas the Appeal should have been by the Churchwardens; but the Court held it might be either way.

The same Term.

Parish of *Henningle.*

PERSON is removed from *A.* to the Parish of *Henningle;* at the Sessions the Justices quash the original Order, and order him to be sent back to *A.* as a settled Inhabitant there, but that this Order shall be final only as to *Henningle.* Moved to quash this Order, because Justices can only affirm or quash, and not make an Order to send him any where, as a settled inhabitant; but the Court held, since this Order was to be final only as to *H.* it was no more than if they had only reversed the first Order; for then he must have gone back to *A.* as an Inhabitant, but they might have sent him to any other Place, and so they may still.

Trinity, Tenth of Queen *Anne.*

Lothbury *against* Inhabitants of St. Peters Hereford.

ORDER of Removal is made by two Justices, which upon Appeal is quashed at Sessions; then another Order to remove the same Person to the same Place, which is quashed at Sessions, because, when the first Order is quashed, they cannot make a new Order to remove the same Person to the same Place, but the Order of Sessions is final as to that Place; upon Motion to quash the second Order of Sessions, it was objected here was no Appeal, but only on Complaint. The Court held, that a Complaint of the Order of Justices to the Quarter-Sessions was an Appeal, and that where the first original Order is quashed upon the Merits of the Cause, it is final between those two Parties, unless the Person does afterwards gain a Settlement in that Parish, which must be made to appear by the Parish from whence he is removed; but if the original Order does appear to be deficient in Form, the Court will presume that it was quashed for want of Form, (for the Justices do not give any Reason for it); it shall not be final.

Chief Justice made an Objection to the first original Order, that it was only on Complaint of the Overseers of the Poor, and does not say for what; so that it may be for any other Matter, and the Overseers need not complain that he is likely to become chargeable, yet they must complain that he intruded into the Parish according to the Statute. This prevailed with the other Party to refer it to a Judge of Assize, which cannot be done but by Consent.

The same Term.

Inhabitants of Petworth *against* Inhabitants of Aingmere.

THIS was held a good Adjudication, that upon Complaint of Churchwardens and Overseers that *A.* was intruded, and could not give Security, there was great Likelihood and Probability that he would become chargeable; all which they did adjudge to be true. Secondly, that where an Order is made to remove him from *A.* to *B.* and that Order confirmed, this does bind *B.* from sending him to any other Parish upon Account of any precedent Settlement; and if he gain subsequent Settlement, it must appear upon the new Order of Removal; the Justices should not refuse to find any Matter specially that is desired.

The same Term.

Queen *against* The Inhabitants of Standem.

AN Order of Removal; the Justices give a Reason, that *T. W.* living as a yearly Servant for two Years, was last legally settled at *A.* It was objected, that though the Justices

need not give any Reason for their Adjudication, yet if they did give a Reason which was insufficient, the Order shall be quashed, and this Reason is insufficient; because it does not appear, that he was hired for a Year together, or that he served in one Place for a Year together: But the Court held, that where the Reason is plainly no Reason, the Order cannot be good; but where some Circumstances only are omitted, the Court will intend them in Support of the Order; as for Children where they make the Father's Settlement to be their Settlement, it is necessary to set forth their Age, that it may appear whether they were capable of gaining a Settlement themselves; but where they adjudge them settled, they need not set forth their Age.

The same Term.

Inhabitants of Lengham *against* Inhabitants of Peckham.

UPON Complaint that *A.* is likely to become chargeable, the Justices make an Order to remove him, his Wife and Family. Quashed as to family.

Michaelmas, Tenth of Queen *Anne.*

Queen *against* Jefferies.

JONES the Father of a Bastard Child is taken by the Constable and suffered by him to escape, upon which the Justices at Sessions make an Order that the Constable shall pay 3*l.* and 1*s. per* Week till the Father is produced, and likewise that the Mother shall pay 6*d. per* Week; Order quashed as to the Constable, but held good as to the Mother.

The same Term.

Queen *against* Parsons and Townsend.

THE Churchwardens of *Whitechappel* are summoned before two Justices to pass their Accounts; their Accounts lie before them for near two Months, then the Churchwardens get their Accounts passed and allowed by two other Justices; upon this the Parishioners appeal to the Sessions; the Sessions set aside that Allowance of the Account, and direct the Churchwardens to go back again to the first Justices; this Order of Sessions is removed by *Certiorari*, and moved to be quashed; because the Suggestion upon which they found this Order is, that one of the Justices who allowed the Account, did not live in the County. Secondly, because no Appeal lies to the Sessions upon Churchwardens' Accounts. Thirdly, because if an Appeal does lie to the Sessions, then the Sessions must determine the Matter, but cannot make an Order upon them to go before two particular Justices.

Court: By the Statute of 43 of *Eliz.* Churchwardens had four Days to pass their Accounts, and if they passed them within those four Days, they may get them allowed by any two Justices; that if they do not pass them within four Days, they may, upon Application from the Parish, be summoned before any two Justices of the Neighbourhood; and it is not necessary that each of them live in the same County, for he may be in the same Parish, and yet not in the same County; that when once the Account is before two Justices, the Churchwardens cannot lay their Account before two other Justices, because the Justices before whom the Account is, may commit the Churchwardens if they refuse to give an Account; that an Appeal does lie from the Justices who allow the Account to the Sessions; that though in the ordinary Case, the Sessions may settle the Account upon an Appeal, yet in this Case the Appeal is for the irregular Allowance by the two second Justices, and when the Sessions set aside that Allowance, they go back of Course to the two first Justices; but this Order is not good, because the Statute requires that it shall be made upon Hearing both Parties; but it appears that this was not made upon Hearing both Parties, but only in the Presence of Mr. *Smith*, one of the Justices. Order quashed.

The same Term.

Queen *against* Inhabitants of Icleford.

A WOMAN who is an Inhabitant of *Icleford*, being with Child of a Bastard Child, goes to *Great Milton* to get some Necessaries of her Relations; the Officers of *Great Milton* procure an Order from two Justices to send her to *Icleford;* but the Waters being out before they could send her to *Icleford*, she is brought to bed at *Great Milton*. It was held by the Court, That though generally a Bastard is settled where it is born, yet in such a case as this, where there is an Order to remove the Mother before she is delivered, the Child shall be an Inhabitant of *Icleford*. If a Woman with Child of a Bastard is sent by Order from *A.* to *B.* she is brought to bed at *B.* then the Order is quashed; the Child shall be sent back to *A.* with its Mother.

The same Term.

Queen *against* Inhabitants of Newick.

UPON Complaint that *A.* is likely to become chargeable, the Justices make an Order to remove him, his Wife, and *A. B.* and *C.* his Children; the Order quashed as to *A. B.* and *C.* because no Complaint that they are likely to come chargeable. *N. B.* The Appeal from Order of Justices to Quarter-Sessions must be the next Sessions after Order is made.

Michaelmas, Twelfth of Queen *Anne*.

Parish of Butch Malter *against* Upton St. Leonard.

A IS settled in *B.* he goes into *D.* an Extraparochial Place, and there gains a Settlement; then he goes into *U.* and is sent unto *B.* by Order of Justices, which is confirmed at the Sessions: the Reason for the Confirmation was, because he could not gain a Settlement in *D.* being an Extraparochial Place, but was last legally settled in *B.* by living there as an Inhabitant. It was held that living as an Inhabitant shall be intended a perfect Inhabitant by Settlement.

But the chief Question was about the Settlement in the Extraparochial Place.

Chief Justice seemed to think, that though a Person cannot be removed to or from such a Place for want of proper Officers to execute the Order of the Justices, yet *A.* might gain a Settlement there, and when he had so done he could not be sent to *B.* for the Justices are to send him to the Town or Parish where he was settled; and in this Case he was not last settled at *B.* but at *D.* which though not included in the Word *Parish*, may be included in the Word *Town*. As to the Objection at the Bar, that if he had been settled in *France* or *Holland*, he could not be said to have been last settled in *B.* there is nothing in this, because a Settlement out of *England* is not such a Settlement as the Justices can take notice of; it is certain that by the Statute of King *Charles*, that a Person should be sent to the Place where he had last lived for forty Days, if *A.* had lived forty Days in an Extraparochial Place, he could not afterwards be sent to the Parish where he lived forty Days before; but to avoid this Inconvenience, he said he did not see why the Justices might not make Officers in those Places within the Meaning of the Words *Town* or *Place*, and then a Person who had gained a Settlement there might be sent thither. Mr. Justice *Eyre* seemed to think that a Man could not gain a Settlement in an Extraparochial Place, nor a legal Settlement within that Act; nor could the Justices make Officers there, for the Meaning of the Word *Town* in the Act is only where a Parish is so large as to contain several Towns; there each Town may have its own Poor and its own Officers, so that a Person settled in one Town, cannot go to another, though in the same Parish. Adjourned.

The same Term.

Queen *against* Bradley.

THE Quarter-Sessions by Order appoint, that Overseers of the Highways shall be fined 30*l.* for not passing their Accounts. Moved to set aside their Order, because the Power given by 4 and 5 *W.* and *M.* to fine Overseers of the Highways was given to the Special Sessions, and not to the General Sessions. Order quashed.

The same Term.

Queen *against* Wotton.

THE Justices make an Order that *Wotton* shall pay 10*l.* Wages to *B.* this Order is removed by *Certiorari*, and moved to quash, because by the Servant's Petition, it appears that he was not a Husbandman, but a Coachman.

By the Court: Unless it appears so in the Order, we will not take Notice of the Petition; the Order taking no Notice of the Nature of the Servant, it was confirmed.

The same Term.

Parish of Sedgebury *against* Parish of Humbleton.

TWO Justices make an Order to remove a Man and his Children to *Humbleton* from *Sedgebury: Humbleton* appeal to the Quarter-Sessions; they reverse the Order, because though the Person was an Inhabitant of *Humbleton*, yet he afterwards went into *Sedgebury*, and living in a Cottage there, rented Land in the Parish of *Hinton* to the Value of 12*l. per Ann.* The Court held, that the Sessions need not give a Reason for Quashing or Affirming an Order of Justices; but if they do give a Reason which appears to be no Reason, their Order shall be quashed; and it is no Reason, because a Man lived in a Cottage in one Parish, though he rented Land in another Parish.

And it was objected against the original Order, that the Overseers of the Poor do not complain that the Person is likely to become chargeable, but it is only said that upon Complaint by them.

But by the Court: The Act only requires that Complaint must be made by them, but does not say what the Complaint must be.

The same Term.

Parish of St. John Baptist in Peterborough *against* Spalden.

AN Order is directed to the Churchwardens and Overseers of the Poor of the Parish of *St. John Baptist* and *Spalden*, or either of them, to take and carry such a Person to the Parish of *Spalden*, and there provide for him. It was objected that this was uncertain, and the Officers of *St. John Baptist* could not provide for him in *Spalden*. Second Objection, that it is said upon Complaint by you, which is uncertain, for the Officers of the Parish where the Person intrudes must complain; but these Exceptions were disallowed; for in Orders which shall be construed favourably it shall be intended a Direction to, and a Complaint by both of them, or else by the proper Officers. Another Objection was, that they adjudge him settled in *S.* being born there, which is no Reason, for unless he is a Bastard, or unless his Parents cannot be found, he does not gain a Settlement there by Birth.

Court: Where Justices give a Reason which cannot possibly be a Reason, their Order shall be quashed; but where they adjudge a Settlement, and give a Reason, which may be a good one, as being born there, the Court will suppose that all necessary Circumstances were had.

N. B. An Order made to the Churchwardens and Overseers of the Poor of *A.* to take care and provide for such a Child, was quashed, because does not say that its Parents were unknown, or could not be found.

The same Term.

Anonymus.

A IS made Clerk of the Parish of *B.* by the Parson without Deed: Question was, whether one appointed Clerk of the Parish by the Parson, and executing the Office for a Year, should gain a Settlement within 3 and 4 *W.* and *M.* of which the Words are, *viz. shall execute any annual Office or Charge*, for it was objected that this was not an annual Office,

By the Court; The Office of Churchwarden was by Common Law, and yet that is for a Year without any Deed or Writing; so it is of a Parish Clerk, he is by Common Law an Officer, and is in for Life without Deed. *Salk.* 536. Parish of *Gatton* and *Milwich.*

The same Term.

Parish of Harrow *against* Edgar.

CUTHBERT settled at *Harrow*, purchases a Copyhold Tenement of twenty-five Pounds *per Annum* at *Edgar*, to which he is admitted, and there lives and has several Children: After his Death it was adjudged, that he was last legally settled at *Harrow*, and order his Children to be removed thither. Moved to quash this Order.

The Solicitor General argued, that though *Cuthbert* could not be removed from his own House, yet that did not gain a Settlement for him and his Children; as when a Man comes with a Certificate, he cannot be removed till he becomes actually chargeable, yet he does not by that gain a Settlement.

But the Court held, that *Cuthbert* was settled in *Edgar*, and his Children; and Lord Chief Justice said, where it is not in the Power of the Justices to remove a Person for forty Days, he gains a Settlement, except in the Case of a Certificate which is specially provided for by the Statute; for if a Man hires a Tenement of 10*l. per Annum*, and unless he keeps it forty Days, it is no Settlement; so of an Apprentice, etc. and when the Father cannot be removed from *Edgar*, the Infants in Point of Nurture and Education cannot be removed from him; and if they live with him, it is out of the Power of the Justices to remove for forty Days, they gain a Settlement; for a Child does not take its Settlement from its Father as an Inheritance, but from its Cohabitation with him; besides the Children cannot be sent to *Harrow*, because the Act impowers Justices to send them where they were last legally settled for forty Days; but the Children cannot be said to be settled at *Harrow* for forty Days, when they never were there in their Lives.

N. B. If Infants are settled with their Father in *A.* the Father dies; the Mother gets a Settlement in *B.* the Infants shall be removed to *B.* for Nurture, but maintained by the Parish of *A.* and sent there again when grown up.

Hilary, Tenth of King *George* the First.

The King *against* Smith.

AN Indictment for Usury on the Statute of *Charles* the Second, was quashed, for that it should have been by Action.

Trinity, Twelfth of Queen *Anne.*

The Queen *against* Smith.

AN Order of Sessions is made for *Smith* to pay 40*s.* for the Expences the Parish have been at in maintaining a Bastard Child, and to pay sixteen Pence *per* Week, towards

Maintaining the Child till it attain the Age of eight Years, and to discharge the Parish of all Charges after, or pay five Pounds for putting it out Apprentice, and give Security for performing this Order. It was objected that this was made without Complaint of the Parish, and the Justices cannot *ex officio* take Notice that a Man has a Bastard, and make an Order upon him; for if he is able and willing to maintain it, he is not within the Statute; that the Order to pay sixteen Pence *per* Week till the Child is eight Years old, is ill, because he may not be chargeable so long; that it was uncertain to pay five Pounds, or secure the Parish.

But these Exceptions were all disallowed, for the Statute does not require that it should be upon Complaint; it does appear that the Child was chargeable, though that is not necessary, for all Bastards are chargeable upon the Parish; and though it may be the Mother keeps it till she is well, yet she may then run away; so that the Justices may make an Order against the Father, unless he has given Security that it shall never become chargeable; it cannot be intended the Child should get its Living before it was eight Years old; the Alternative is for the Benefit of the Party; but the Order quashed for the last Clause, which was for finding Security to obey the Order, for that cannot be till he has broke it.

Trinity, Twelfth of Queen *Anne*.

The Queen *against* Searle.

NOMINATION of Overseers of the Poor of *Honniton;* the Justices having Authority to appoint fit Persons and sufficient Householders, it is not sufficient to recite that these Persons are sufficient Householders, as appears by the Certificate of the Churchwardens, but the Justices must determine that these are sufficient Householders.

Secondly, as to the Limitation of the Office, the tenth of *April* is the Time of Nomination, and they appoint for the Year which is ill; for they must be appointed at *Easter*, or within a month after; and *Easter* being moveable they may be in above a Year, or less, and then there would be no Office.

Sir *Peter King:* These Orders are to be construed as Orders of Regulation, and not Orders of Judgment, as Settlements, etc. and it is not usual for this Court to meddle with Orders of Regulation, as for Rates, etc. The Words were, that upon Certificate of the Churchwardens of *Honniton*, that *A. B.* and all of them, Householders of *Honniton*, are fit to be Overseers of the Poor.

The Court held, that these Words, *all of them*, etc. were the Words of the Justices, and not of the Churchwardens; and the Appointment for a Year according to the Act of Parliament, is good.

The same Term.

Parish of Eglium *against* Hartley Wintly.

AN Order adjudges that *J. S.* was settled at *B.* and therefore they remove his Widow and Children to *B.* Order is quashed, for the Wife may get a settlement after the Death of her Husband.

The same Term.

Parish of Silveston *against* Ashton.

A SERVANT is hired by her Master for a Year at *Ashton*, lives with him there for six Months, then he removes to *Patchel*, and gains a Settlement there, where she serves the other six Months.

Lord Ch. Just. *Parker* and Justices: Upon the 13 and 14 *Car.* 2. Servant was not removeable from his Service at all, if he was hired regularly; and so by serving forty Days he got a Settlement. By Statute of *Jac.* 2. Notice must be given, but that does not extend to Persons not removeable before that Statute. 3 and 4 *W.* and *M.* makes Notice necessay to be published in the Church; and that Statute directs several Qualifications, in which Case

Notice was not necessary, and Serving for a Year was one. Upon that Act, if a Person was hired for a Year, and served only forty Days, it gained a Settlement, But by the other Statute, the Service must be a Year; and notwithstanding that Statute, it is the Continuance of forty Days makes the Settlement, if the Circumstances required by the Act are complied with; and the Hiring is not into any particular Parish, but in any Parish that the Servant serves forty Days; if the Hiring was according to the Statute, and the Service a whole Year, as the Statute appoints, the next Question is, whether the Master holding his Land still in *Ashton*, does not make him an Inhabitant of *Ashton?* But that cannot be, for he only keeps his Land to take off his Crop, but is an Inhabitant at *Silveston.*

By *Chief Justice:* If a Servant is a single Person and has a Child, yet if such Child is provided for, and no Charge to the Servant, he may gain a Settlement within the Statute, though it says, *not having Child.*

By Mr. Justice *Powis*, sen., it was held, that if a Lodger hires a Servant for a Year, who serves a Year, he gains a Settlement though his Master was not settled. Accord with Chief Justice.

Mr. Justice *Eyre:* There are two Questions; First, Whether any Settlement is gained? Secondly, In which Parish?

The Servant has complied with the Circumstances required by the Statute. The Master was settled in *Ashton* at the Time of the Hiring, by which the Servant became Part of his Family.

It was held in the Case of an Apprentice, that where his Master was settled, there he gains a Settlement; and there is as much Reason in the Case of a Servant; it would be hard upon the Servant, if the Year's Service should not gain a Settlement; and it seems to me he gains a Settlement where his Master last settled; and the Words in the Statute, *the same Service*, are no more than a Service in Pursuance of that Contract.

Mr. Justice *Powis:* The Clause is relative to the Place, and it is for the Sake of that Place that the Act was made, and not in regard of the Master; and the Act seems to take away the forty Days, and make a Year's Service a Settlement; and therefore the Service must be in the same Place for the whole Year, that they may be sufficiently acquainted with the Behaviour and Character of the Person who is to be settled.

Chief Justice: It was declared that the Intent of the Parliament by *such Service* was only a Service for a Year; but there was no Dispute of the Place, nor is it necessary; for it is not material where the Party lives, if he behaves himself well in his Service for a Year. Besides, according to this Exposition, those Gentlemen who live Half a Year in the Country and Half a Year in *London*, their Servants could never gain a Settlement. It is certain the Servant could not be removed from his Service while he lived in the second Town, and if he was not removeable for forty Days, he is settled; and the Doubt which occasioned the second Statute of *W.* and *M.* was upon the Time of the Service, not the Place.

Mr. Justice *Eyre:* Upon the first Statute it was held that forty Days, in Pursuance of such Hiring, did gain a Settlement though the Party did not serve for a whole Year, which occasioned the second Statute to be made, to direct that the Service should be for a whole Year, but without any Regard to the Place. Both Orders quashed.

It was mentioned from the Bench as an adjudged Case, *Edgar* against *Henden: A.* having a Copyhold of about 30*s. per Ann.* comes with two or three Children, and lives there some Years; after his Death it was held that the Children by living there forty Days immoveable, had gained a Settlement.

The same Term.

The Queen *against* Parish of Woburn.

AN Order of Removal does adjudge the Parish of *W.* to be the Place of *J. S.*'s legal Settlement, and therefore they remove *J. S.* his Wife and five Children, one of which appears to be of the Age of twelve, another of eight, and the Rest of about seven, or under. The Court were of Opinion, that after seven the Children might gain a Settlement for themselves, and therefore there ought to be an Adjudication of the Place of their Settlement.

Michaelmas, Twelfth of Queen *Anne.*

The Queen *against* Wagstaff.

AN Order was made by Justices for *Wagstaff* to take a poor Child Apprentice, and sign an Indenture, by which, *inter alia*, he covenants to give the Child two Suits of Cloaths, etc.

This Case is not within the Act, because it says the Children of poor Persons; but this Order says, it was a poor Child, and yet it may have Parents able to maintain it. Secondly, the Age of the Child does not appear.

Thirdly, Mr. *Wagstaff* is such a Person as the Justices cannot oblige to take a poor Child; for it does not appear that Mr. *Wagstaff* is a Housekeeper, so that it may be he was a Lodger; and though the Act says, as the Overseers should think fit, yet that must have a reasonable Construction; the Act says, they shall put them Apprentice as they think fit; that does not extend to the Terms, but only to what Sort of Children, but the Terms are left to the Law; here is a Covenant that he shall at the End of the Term give him two Suits of Cloaths; they might as well have ordered that he should have given him a hundred Pounds. It appears that Mr. *Wagstaff* is a Gentleman, an Attorney. 3 *Keb.* 3 *Mod.* 269. At Law it was a Question upon the Statute 43 *Eliz.* whether a person could be compelled to take an Apprentice till 8 and 9 *Anne;* but still you cannot compel every Person, but only ordinary Trades, or Men of Husbandry.

Chief Justice: There is no Occasion to describe the Child farther than the Act requires; but the Providing two Suits of Cloaths has no Relation to his being Apprentice.

Mr. *Fortescue:* It is proper to have Indentures; and this is a Covenant very proper, because 8 and 9 *W. cap.* 30. gives a Power to the Justices to appoint what Terms they think fit; for the Person is to receive the Child according to such Indentures as shall be signed by the Justices, so that the Indenture is to be settled by the Justices.

Chief Justice: At that Rate the Justices may make a Covenant to give him a House, and allow him twenty Pounds *per Annum;* the Indentures are in Point of Time, and other Things properly relating to an Apprentice; they may appoint him Necessaries during his Apprenticeship. The Order quashed.

The same Term.

The Queen *against* Charlton.

CHARLTON is indicted, for that being a Churchwarden of *Finchly* he was requested by several of the Inhabitants of *Finchly*, to provide Lodging for a poor Person who was settled in *Finchly*, and that he, contrary to the Duty of his Office of Churchwarden, did suffer him to lie in the Street for seven Hours ill of the small Pox.

Mr. *Darnell* moved to quash this Indictment, for the Party is not chargeable as Churchwarden; it does not appear but that other Churchwardens might have provided for him, or that he could not provide for himself, because the Statute directs forty Pounds Forfeiture.

Chief Justice: He is chargeable to take Care of the Poor as Churchwarden; if any other Churchwarden provide for him, or if he did as soon as he could, it is not an Offence against the Duty of his Office. Demur to it.

The same Term.

Great Dolby *against* Whitechappel.

THE Justices of *Great Dolby* make an Order in this Manner: *Whereas A.* and *B.* were taken up at *Newport Pannel*, and there whipped as Vagrants, and sent to *Great Dolby* as the Place of their Father's Settlement; whereas the Law does require that they ought to be sent to the Place of their Birth; and it appearing upon Oath that the Place of their Birth was *Whitechappel*, they send them to *Whitechappel.* These Orders are removed.

Mr. *Darnell* objected to this last Order, that where the Place of Settlement appeared, they ought not to be sent to the Place of their Birth. Secondly, that if they should, the Justices have no authority in this case, for here is no Complaint by the Parish, or if it was wrong it was proper to appeal.

The Court was of Opinion that they must be sent to the Place of their Birth; and it does appear to the Justices of *Great Dolby*, that they have not been sent according to Law, and therefore they send them to the Place of their Birth.

Chief Justice: It seems doubtful whether they should not have sent them back to *Newport Pannel;* for the Justice of *Newport Pannel* who punished them at *Newport Pannel* is the proper Justice to send them to the Place of their Birth.

Chief Justice: It was made a Question in Chief Justice *Holt's* Time, and never determined, when a Justice has sent a Vagrant to the Place of his Birth, Whether the Justice there can send him over to the Place of his last Settlement, by Virtue of the Act of Settlement, or whether the Vagrancy has not stripped him of all Settlement. After all the Orders were quashed for other Reasons.

N. B. Held by the Court, if an Order of Settlement is, *Whereas* upon Complaint to us, etc. that *J. S.* is intruded into the Parish, *and* is likely to become chargeable; this is only Part of the Complaint and no Adjudication; but if it is *who* is likely to become chargeable; these are the Words of the Justice, and an Adjudication that the Party is likely to become chargeable.

The same Term.

Parish of Horsham *against* Shipley.

J. S. settled in *Horsham*, is hired nineteenth of *February* one thousand seven hundred and ten, to serve in *Shipley* to *May-tide* following; at that time agreed to serve till *Lady-day* following; at that Time agreed to serve till *May-tide* next. Quashed, unless Cause, because no Hiring for a whole Year. *N. B. J. S.* hired for Half a Year, serves a Year; then is hired for a whole Year, and serves Half a Year. Held it gained a Settlement, for here was a Hiring and a Service for a Year.

Hillary, Twelfth of Queen *Anne.*

The Queen *against* Dalloe.

UPON Complaint to the Sessions by an Apprentice of a Glass-bottle-maker; the Justices discharge the Apprentice, and give this Reason, because it appears by the Counterpart of the Indenture, that he was not bound for any certain Number of Years.

First Exception, That this is not a Trade within the Statute.

Mr. *Darnell:* The Penal Part of the Statute shall be tied up to Trades then used, but this Clause must have a more liberal Construction; for the Act enables any Housekeeper to take Apprentice, and then gives Jurisdiction to the Justices to take such Care as they shall think fit.

Second, They have no Jurisdiction to discharge for a Matter of Law, but only for Misbehaviour of the Master.

Mr. *Darnell:* The Words of the Statute are, that they shall do as they think fit, signifying the Cause; in this Case it does appear, that the Indenture is of no Effect, there being no Term expressed, the Justices thought fit to discharge him.

Sir *Peter King:* In 2 *Roll.* 822. it was doubted, whether the Power of Justices extended to any Apprentice but as are imposed by the Act of Parliament; but in *Hill.* 11 *Will. Green's* Case, it was held, that it did extend to all Apprentices of any Trade within the Statute, which this is not; but if it is, yet they have no Power to discharge for a Matter of Law, as this is, but only for an Abuse of the Master or Servant.

Chief Justice: If it was a *res integra*, I should have thought it was confined to such Ap-

prentices only as were bound by the Authority of the Justices; but it has been extended further, to any Trade which at that Time had been used then within some Market-Town.

As to the second Exception, here is un Apprentice complains to the Sessions of the Default of his Master; upon producing the Counterpart of the Indenture, it appears that the Space for the Term of Years is not filled up, and so it appears that he is not bound, and therefore not necessary to inquire further into the Default of the Master.

Mr. Justice *Eyre:* It has been extended further than to Trades which were exercised at that Time; they seem to have no Authority to make Orders for the Payment of Gentlemen's Servants, and yet they do it every Day. Adjourned.

Michaelmas, Twelfth of Queen *Anne.*

Parish of Dunsole *against* Walborough Green.

TWO Justices make an Order, reciting, *Whereas* it appears to us, etc. that *M. Cambel* is Wife to *A. Cambel*, a Scotchman in her Majesty's Service; and that she with a Child of seven Years old has intruded into the Parish of *D.* and they adjudge *W.* to be the Place of her last legal Settlement, and send her thither. It was urged that this was a Divorce, and they should have sent her to the Place of her Husband's Settlement; but the Order was held good.

Hilary, Twelfth of Queen *Anne.*

The Queen *against* Dunn.

AN Order is made for *Dunn* to maintain his Son's Widow.

Sir *Peter King* moved to quash it.

First, because a Daughter in Law is not within the Statute. *Secondly*, the Act is, that the Father or Grandfather, Mother or Grandmother, being of sufficient Ability, shall maintain, etc. whereas it does not appear in this Order that *Dunn* was of sufficient Ability.

Chief Justice: A Man shall be intended of sufficient Ability to maintain himself and his Family, but not farther. The Order was quashed for this last Reason.

Mr. *Chapple* cited the Case of *Challenger;* if the Son was dead the Relation ceased, and it was no Cause of Challenge; to which Chief Justice agreed.

The same Term.

The Queen *against* The Inhabitants of Manchester.

AN Order of two Justices directing the Churchwardens of *Manchester* to allow *Elizabeth Redish* two Shillings a Week to maintain her and her four Children, and to continue till the next Sessions, and till further Order.

First Exception, It does not appear that the Woman was poor.

Second, It is ill for the Uncertainty; not naming the Children.

Third, It is ill, because to continue till further Order; whereas it should only continue so long as she is indigent.

The Order quashed, because it does not appear that the Woman was indigent, or that the Children were Inhabitants of the Parish, but the Court seemed to think it not necessary to name the Children.

The same Term.

Parish of Lipley.

IN the Parish of *Lipley* in *Lincolnshire*, the Impropriator of the Tithes made a Composition with the Occupiers of the Land. *A.* and *B.* two Justices, make a Rate for the Poor, and charge so much an Acre upon the Land in the Hands of the Occupier, in respect of the Tithes, and make a Warrant to levy this with Direction; if the Parties were not satisfied

with this Assessment, to appeal to the Sessions; the Sessions is before *A. B.* and *D.* only these Orders are removed upon a *Certiorari.*

The Court was of Opinion, that the Proceedings of the Justices was wrong, but seemed to be of Opinion that the Tithes were rateable to the Poor in the Hands of the Owners of the Land, for they are to be considered as Occupiers of the Tithes; but this was referred to the Judge of Assize.

The same Term.

Parish of Aumden *against* Malesdine.

H. MAKES an Order to remove seven poor Persons to *M.* *M.* makes a new Order to remove them to *H.* the Parish of *H.* appeals; this does not waive the first Order, but the first Order is good reason for the Appeal; it is suggested that the first Order was made after the second, but only antedated.

By the Court: We cannot take Notice of that Fact, but if it can be proved, an Information may be granted against the Justice.

Easter, Thirteenth of Queen *Anne.*

The Queen *against* The Parish of Havant.

RULE to quash an Order for Removal of a poor Person; the Churchwardens refuse to receive him back again, upon which an Attachment was granted against them, unless Cause.

The same Term.

The Queen *against* Waddon.

AN Order is made at the Quarter-Sessions of *Plimpton* to charge *J. S.* as the Father of a Bastard Child; *J. S.* appeals to the Quarter-Sessions of the County, who set aside the first Order, and make a new one upon *Waddon.*

Sir *Peter King* moved to set it aside, because no Appeal lies from the Corporation to the Quarter-Sessions of the County.

Chief Justice: The Act of Parliament is express, that the Justices of Corporation in their respective Sessions, shall have the same Power as the Justices of the County, and therefore the Appeal must be to them at their Sessions. The Order must be quashed.

The same Term.

Anonymus.

MR. *Letchmere* moved to quash an Order, because the Justices set forth a Fact which does not amount to a Settlement, and therefore we do adjudge the Party to be settled there, whereas it is not a Settlement.

Chief Justice: Where they adjudge a Settlement, and give a Reason which is insufficient with it, and shews that it can be no such Settlement, we quash the Order; but if they only give an insufficient Reason, we will not intend that to be the only Reason for their Adjudication, and therefore the Order is good.

The same Term.

Parish of Collington *against* The Parish of Widworthy.

J. S. is bound Apprentice in *Collington*, in respect of Land which he had in *Widworthy;* *J. S.* served his Time in *Collington;* the Justices held him settled in *W.* Order quashed.

Trinity, Thirteenth of Queen *Anne.*

Parish of East Greenwich *against* St. Giles's.

J. S. was removed by Order of two Justices from *St. Giles's* to *Greenwich;* about six Months after two Justices make a new Order, and remove *J. S.* from *Greenwich* to *St. Martin's.*

The Court held the second Order ill; for though it is possible that *J. S.* might have gained a new Settlement since his Removal to *Greenwich*, yet the first Order being a Judgment upon them, if he has gained a new Settlement, they ought to have mentioned it in the new Order.

The same Term.

Parish of Woolverton *against* Sherborn St. John.

H. CHARGEABLE at *A.* being last settled at *B.* is removed to *D. D.* does not appeal, but would send him by New Order to *B.* who appeals; and the Justices at Sessions being doubtful, referred it to the Judges of Assize, who were of Opinion that *D.* was concluded; five Years after *D.* brings a *Certiorari* to remove the first Order, and quash it.

Sir *Peter King* moved that it might not be quashed, being five Years standing, and referred to the Judge of Assize.

Mr. Justice *Eyre:* Where at the Sessions the special Matter is found, in Order for this Court to determine the Point in Law, they cannot take exception for want of Form in this Case; if it had appeared when the *Certiorari* was moved for, that the Order was five Years standing, it would not have been granted; or if they had applied before the *Certiorari* had been filed, we would have granted a *Procedendo;* but the Question is, whether, after it is filed, we are bound *ex debito Justitiæ* to quash it for want of Form.

Chief Justice: If the Merits of the Settlement had been referred to the Justices, we would not quash it for want of Form; but here the Merits are with *D.* and the Reference was only upon the Conclusion; let it stay, but let there be a Rule that no Return of a *Certiorari* to remove Orders shall be filed, without an Affidavit of Notice, if the Order hath been acquiesced under for a Year.

The same Term.

The Queen *against* Illingworth.

AN Indictment for disobeying an Order to pay Arrears of an Allowance to a poor Person, directed to be paid by a former Order.

Mr. *Fazakerly:* First Exception, the Indictment does not set out the First Order; and if there were no first, the second Order is void, because there can be no Arrears when there was no original Order to pay the Sum: The twentieth of *April*, Order Eleventh of Queen *Anne*, that the then present Churchwardens should pay, and it does not appear that these Defendants were Churchwardens, for it is only averred that on the eighth of *May* they were Churchwardens; and though they were Churchwardens, yet it does not appear that they did not pay the Money; it is only said that they refused to pay it on the eighth of *May*, or ever after, and yet they might pay it before; it is said that they had Notice of the Order on the eighth of *May*, but yet they might have Notice before.

But if this Indictment is good as to Form, yet it is ill in substance; for the Justices have not by any Act of Parliament a Power to make such Order; and therefore the Order being void ought not to be obeyed; the Intent of the Act was to restrain the Abuse in Churchwardens and Overseers, in giving to what Persons and what Number they thought fit; and the Act directs that a Register shall be kept, but does not give the Justices a Power to direct a certain Sum to be paid.

Order by two Justices to pay a Surgeon's Bill for curing a poor Woman, in *Trinity* Term

in the seventh Year of Queen *Anne* was quashed, because though the Overseers were obliged to take Care of the Woman, and the Surgeon might bring his Action against them, yet the Justices have no Jurisdiction to make such Order.

But if they have a Jurisdiction to direct the Payment of a certain Sum, yet it must be to be paid out of the Parish Money when raised, and not in general; for the Overseers have no Remedy to reimburse themselves for Money laid out, as was held in *Tawney's* Case, and in the Case of the Inhabitants of *Ware*.

If it is an Order made without Jurisdiction, they are not bound to obey it. *Cro. Car.* 394.

Judgment was given for the Defendants, because the Order had been quashed before.

N.B. The Order was quashed on which the Indictment was founded.

The same Term.

Parish of Chesham *against* Missenden Bucks.

JOHN BARNES living in a Cottage upon the Waste, hires his own Daughter for a Year at 10*s. per. Annum;* and the Question was, whether this gained her a Settlement: The Court were of Opinion that it did.

Michaelmas, First of King *George* the First, 1714.

The King *against* The Parish of New-Windsor.

MOTION to quash an Order of Removal of *Elizabeth Clerk*, Widow, and *George* her Son, aged nine Years, and *Elizabeth* aged seven Years.

Mr. *Reeve:* First Exception, the first Part is a Conviction distinct from the Order of Removal, *viz. Memorandum*, Complaint is made to us that ——— are lately come into, and are likely to become chargeable, etc. without any Justices' Names; then comes the Order of Removal, which is a Recital of this Order of Conviction, as done at another Time, *viz. Whereas* we whose Names are underwritten, have this Day made an Order, etc. where *have*, being the *preterperfect Tense*, is a recital of a Thing past and done.

Mr. *Fortescue* on the other Side said, What Mr. *Reeve* calls the Order of Conviction, is the Adjudication, and the Rest is an Order of Removal, and all the Parts of the Order are relative; for the Words, *to us*, refer to the Names underwritten; and the Words, *We have this Day made an Order*, is the same as that we have this Minute made an Order.

It is not material in what Part of the Order the names are subscribed, as appears 3 *Lev.* 86. where it is said, that it is not material in what Part of a Will the Name is subscribed.

Mr. Justice *Powis:* If the Adjudication be in any Part of the Order, it is sufficient; nay if there be no Adjudication, but it is said that it appears to us, or that it is taken by us to be so or so, this Court will think it sufficient.

Chief Justice: There is no more in this than that the first Part is the Judgment, the other the Execution; *i.e.* the one is the Determination of the Settlement, the other is a Direction to the Officers to remove them; the Appeal is from *the Order*, which is an Allowance that it is but one Order.

A Deed and a Bond for Performance of Covenants, is the same Deed, though the Bond recite it as a separate Deed.

Second Exception; It is said that they intruded into the Parish, and are likely to become chargeable; whereas it should have been, that they intruded contrary to Law, or that they endeavouring to get a Settlement there contrary to Law; for otherwise the Justices have not, according to 13 and 14 *Car.* any Jurisdiction.

Contra, The Word *intruded* must be intended contrary to Law, for otherwise they could not intrude.

Chief Justice: In 7 *W.* 3. this Exception was taken and over-ruled.

Mr. Justice *Eyre:* In that Case it did not appear that the Person came to settle in a Tenement under ten Pounds *per Annum*, which is a Description in the Act: But it was held

upon Search of Precedents, that it was supplied, by saying that he was likely to become chargeable, for they are both Descriptions in the Act, and either is good.

Mr. Justice *Powis:* The Words *likely to become chargeable*, imply that a Person is not in a Tenement above ten Pounds *per Annum;* for if he be in such a Tenement, no one can aver that he is likely to become chargeable.

Chief Justice: That a person is not in a Tenement above ten Pounds *per Annum*, is not a necessary Description, but a Circumstance; and these Words are supplied by Words *likely to become chargeable*, as the Circumstances necessary to make a Man removeable, *viz.* that he came into the Parish within forty Days, is supplied by the Word *lately*. Confirmed.

The same Term.

The King *against* The Parishes of St. John and St. Mary, in the Devises.

IT being before the Quarter-Sessions to adjust and settle the Proportions these two Parishes should pay, of the Money charged on them for the Relief of the Prisoners and *Marshalsea*, and for removing Vagrants, and repairing the County Bridges; it was referred to Mr. *Long* and Mr. *Bennet*, two Justices of the Peace, to inquire, etc. and assess the Proportion, who drew up an Order, in which they do assess and adjust the Proportion, in Manner following, etc. without stating the Fact; and referring to the Court, they deliver it into the Court, who generally confirm the said Assessment without any Inquiry or Re-examination.

Exception; The Sessions cannot delegate their Authority to two Justices; therefore as they have made an Order which is void, the Confirmation must be so too; it might have been well, if they had said, that on rehearing the Matter, etc. they did confirm the said Order.

Though in the Case of the Queen and Inhabitants of *Ware*, an Order to pay sixteen Pounds due to Overseers on Account, was quashed, because referred to Justices; though it was said that on their Report and Hearing, the Matter *de novo* did make the said Order.

Contra; It is admitted that Quarter-Sessions have Jurisdiction, though it will be a Question, whether this Act of Confirmation will not amount to an original Act, and be different to the Construction at Common Law: I do admit that if it had come back to them, it would have been naught.

Chief Justice: This is wrong, it should be on their own Knowledge and Judgment; I do not see that this is well taxed according to the Act of Parliament, for if it be taxed as a Corporation, the Assessment ought to be general throughout the whole; if as Part of the County, it should appear on the Order.

I question whether the two Justices could administer the Oath in this Matter.

It stands singly on the Order of two Justices, whereas their Inquiry should have been preparatory only to the Examination of the Sessions, for they cannot delegate their Authority.

Easter, First of King *George*.

Parish of Frencham *against* Pepper-Haw.

A HIRES *B.* on the third of *October*, to serve him till *Michaelmas* following, which was for one Year within a Day, (for it being leap Year, the two Days are accounted but one); he after keeps him three Days, and then paid him his Wages: Question whether such an Hiring is sufficient to gain a Settlement within the Act of Parliament.

Mr. *Reeve:* It was urged that this was a Fraud to evade the Act, and as it was manifestly such, that it should be an Hiring to gain a Settlement.

1 *Cro.* 233. 2 *Cro.* 308. A Lease for one Year, saving one Day to prevent a Forfeiture, was adjudged a Fraud, and as fatal as a Lease for a whole Year.

In the Case of *Duppolt* and *R.* it was resolved that an Hiring for two Half Years should not gain a Settlement; but Justice *Powell* said, that if there be an Hiring for a Year, save a Day, it is a Shift; and I should think it a good Settlement.

The Case in *Croke* is a stronger Case than this, as it makes to a Forfeiture.

Mr. Serjeant *Darnell:* This must be settled by the Words of the Act of Parliament, which makes an Hiring for a Year necessary, whereas here there was not such an Hiring.

If there was a Fraud, that was fit for the Justices to determine on the Evidence, but they apprehended no such Thing, therefore this Court must judge on the Order.

If there was a Fraud, that will not make this a Settlement, the three Days' Service after *Michaelmas* is not material.

Chief Justice: He did not receive his Wages till he had staid three or four Days after *Michaelmas*, which makes it plain that he staid to make up the Year. I think the Fraud is material; for there was a Case of a Woman big in one Parish, and shuffled into another, to prevent the Child's Birth in that Parish, and in consequence its Settlement there; and the Woman was brought to bed in the other Parish, yet upon the Fraud the first Parish was forced to maintain the Child.

Mr. J. *Powis:* The Fact shews the Fraud.

Mr. Serjeant *Darnell:* It will be hard to determine how many Days or Weeks shall be adjudged a Fraud, and no one can tell where it will end; therefore as the Law-makers have settled a fixed Time, we must stick to it. Adjourned.

The same Term.

Parish of St. George *against* St. Katharine's in Southwark.

MOTION to quash an Order for Removal of the several Children of *Anne Floyd*, from the Parish of *St. Katharine* to *St. George.*

The Fact stood thus; *Anne Floyd* after the Decease of her Husband who was settled in *St. George's* Parish, removes into *St. Katharine's* with *B.* aged four Years, *C.* aged two Years, and *D.* aged six Years, and then takes a House of twelve Pounds *per Annum;* she lives there four Months paying the Poor's Taxes, but paying no Rent, the Justices make an Order to remove her Children from thence to *St. George's* Parish, being the Settlement of their Father.

First Exception; The Order is naught as to the Children, who were under the Age of seven Years, for they being Nurse-Children must be settled with their Mother by Reason of Nurture. *Easter*, 12 *W.* 3. *Budge* and *Saunders. Easter*, 2 *Anne*, *Cumner* and *Milton.*

Second, It is a Question whether if the Mother settles herself and takes her Children with her as Part of her Family, that will not communicate a Settlement to them; it is certain, according to the Case of *Cumner* and *Milton*, that the Settlement of the Father where-ever it be, shall give a Settlement to the Children, why should not the Settlement of the Mother, in like Manner, if she gains a Settlement by any other Means than by Marriage? For by 43 *Eliz.* she is equally obliged with the Father to maintain the Children, and that Statute makes no Difference in the Sexes; so by 4 *Jac.* 1 *cap.* 7. she is equally punishable with the Father for deserting her Children.

It is true, if she gains a Settlement by Marriage, she cannot communicate a Settlement to her Children, because she has it not in her own Right.

Contra; Children, though under the Age of seven Years, must be sent to their Father's last Settlement; and it will be another Consideration whether they shall be sent back to the Mother for Nurture.

It is a Question, whether taking an House of twelve Pounds *per Annum*, and living there four Months without paying any Rent, will gain a Settlement.

One cannot gain a Settlement merely by going to a Place as Part of the Family. *Mich.* 10 *W.* 3. *Wainford* and *Wenthworth.*

It does not appear on the Face of the Order, that the Children are removed from the Mother; she may be dead.

If the Children are once settled by the Settlement of their Father, they must do some Act to settle themselves elsewhere, as the Wife does by another Intermarriage.

Chief Justice: This Case, as stated in the Order, insinuates that she fraudulently hired this House to gain a Settlement without designing to pay any Rent, and as if she was not to

be required thereto; but though she might not have paid any Rent at four Months end, yet she may have paid it now; there is no Distinction between the Settlement of Children with the Father or Mother, for they are as much hers as the Father's, and Nature obliges her as much as the Father, to provide for them; so does the Law and every Argument that holds for their Settlement with the Father, holds as to their Settlement with the Mother.

The Reason why Children shall not gain a Settlement where the Wife gains a Settlement only by Intermarriage, is because it is not her Family, but her Husband's, and she cannot give the Children any Sustenance without the Husband's Leave.

Since she is equally punishable with her Husband for deserting her Children, and therefore could not leave them behind her, they must gain a Settlement with her. Quashed.

The same Term.

Parish of Abergenny *against* Langhany.

ORDER to remove the Wife and Children of ——— from *L.* to *A.* without naming them; quashed as to Children, because too general, and *Mich.* 4 *Geo.* an Order was quashed on the same Exception.

The same Term.

Parish of Pawlet *against* Burnham.

MOTION to confirm an Order to remove *Hugh Pool* and his Wife, from *P.* to *B.* The Fact was, that he served one Year in *P.* and after was hired to serve one Year in *B.* he served his Year in *B.* save three Weeks, and then being a Covenant Servant parted with his Master by Consent, he deducting six Shillings for the three Weeks, his Wages being three Pounds *per Annum.*

It was urged, that as he was a Covenant Servant he could not be discharged by Consent, and therefore continued a hired Servant for the Year.

Besides, that this was a Fraud to prevent the Settlement, since it did not appear that he grew sick or more unable to serve than when hired, and notwithstanding discharged.

Chief Justice: There is no Difference between a Covenant by Deed or by Parol as to a Settlement, for though the Consent does not discharge the Covenant, yet it does the Service, and the Act turns upon the Service.

His Master deducting six Shillings, his Wages being but three Pounds, shews that there was no Fraud or Temptation to the Man to go; but it seems to be the Man's Choice, and that the Master would have kept him.

Nothing can make this a Settlement, unless there be a Fraud apparent or expressed. Order quashed.

The same Term.

Parish of Bramley *against* St. Saviours Southwark.

MOTION to quash an Order of Sessions, to set aside an Order of two Justices for the Removal of *Anne Grey* and *R. Grey* her Child, the Order of the two Justices was set aside for insufficiency generally.

Exception; Though the Sessions need not set forth the Reason of their Judgment, but was generally quashed for insufficiency, yet they must make such a Description of the Person, as it may appear what Sort of Person he is; but here the Order does not say whether *Anne Grey* was a Widow or a Wife, (indeed it does say she had a Child) the Consequences of these Considerations are very different as to her Settlement. *Trin.* 4 *Ann.* in the Case of *Senwick* in *Kent*, an Order to remove the Child of ——— single Woman, was quashed; and in the Time of *W.* 3. a Child found in *Christ-Church* Hospital, and sent by an Order to the Churchwardens to be provided for, without saying that the Parents were unknown, was held wrong.

Here were several Adjournments, which (unless by Difficulty appearing to the Court) is not warrantable.

Contra; If the Sessions need not set forth the Circumstances or Qualifications necessary to gain a Settlement, it is well here, for they have set forth that she is likely to become chargeable.

Chief Justice: The Appeal is not to the Persons of the Justices of the Peace, but to the Court, and they may adjourn it; they need not shew what the Insufficiency is, they have Power to quash on the Order or Fact; but though they need not shew what the Insufficiency is, yet when it comes before us we must consider the Insufficiency or Sufficiency of the first Order.

It is a sufficient Description of any Person to name him or her; if she be a married Woman, it may alter the Judgment as the Fact happens, but this and such Objections are but in Point of Facts.

They say this is her Settlement, and is a Fact proper to have been contested at the Sessions, and the naming of two Justices does not bind the Sessions.

As to the Cases quoted, it is true where Justices fix an Order on a single Fact, there it must be set forth; for if they say a Child was found in ——— and thereby gained a Settlement, if that be not good to gain a Settlement, the Order is wrong; but if they say generally ——— was her last legal Settlement, it is well.

Note; Order of Sessions was quashed, because the Naming her by her Name in the Order of Justices was a sufficient Description, and there was no other Exception to the Order of Justices.

Michaelmas, First of King *George*.

Parish of North Nibley *against* Wotton Undridge.

QUESTION was, whether *G. Hicks*, at *Lady-Day* 1714. hiring an Inn to hold for one Year at the Rate of six Pounds five Shillings *per Annum*, towards the end of *May* following, hiring a Meadow Ground till *Lady-day* following, was such a Hiring of a Tenement above ten Pounds *per Annum*, as to gain a Settlement, it being of several Possessions: (*N.* The Meadow had been hained up from *Lady-day* before, so that he had the whole Profits).

Court: This is a good Settlement, for when other Lands are laid to it, it becomes an intire Tenement, besides the Value is principally respected, and not the Tenure: A Tenement of ten Pounds *per Annum*, hired but for one Month, would not make a Settlement, because he is not to answer ten Pounds Rent.

The same Term.

Elsley Lovat in Worcester *against* Clent in Staffordshire.

AN Hiring and Service gains a Settlement notwithstanding Marriage within the Year.

N. In Case of *Farington*, one hired for a Year in *Farington* marries; two Justices remove out the Servant by Consent of Master to *Wilcote* in *Oxfordshire*, within the Year; upon Appeal of *W.* this Fact stated, Order confirmed, but *King's Bench* quashed it.

The same Term.

King *against* The Inhabitants of Dumpleton.

JOHN RUCK was Apprentice with his Father seven Years at *Dumpleton*, then went to *Sedgborough*, and took an House of twenty Shillings *per Annum*, and took Lands of eleven Pounds *per Annum* at *Hinton*, but did not live there.

On the State of this Fact, and on a Reference to two Judges of Assize, the Parish of *Dumpleton* was adjudged to be the last legal Settlement of the said *John Ruck;* which was also agreed by the Court of *King's Bench*.

The same Term.

Parish of All Saints Southampton *against* Michael Woodstreet, London.

MOTION to quash an Order of Removal of *Nort. Pool.*
Exception; He was sent from *Swindon* in *Wiltshire*, to *All Saints* in *Southampton*, who never appeal from that Order, but they send him on to *St Michael.* Quashed.

The same Term.

King *against* Miles.

ON a Motion to quash an Order of Bastardy, it was resolved, that if the Father run away, and returned, though fourteen Years after, yet an Order to fix the Child on him is good, notwithstanding the Statute of *Car.* 2. gives a Power to Justices to make an Adjudication behind his Back, and to charge his Effects, for there is no Statute of Limitation as to these Cases; nor is there one Instance where Justices have been restrained.

An Order to disburse the Parish Charges they have been at since the Birth of the Child, is good even for those Charges the Parish is at subsequent to his Age of seven years.

It must appear in what Parish the Child was born, and that the Birth was in that Parish in whose Aid the Order is made.

It is not necessary to fix the Day of his Birth in the Order.

It is enough to say in the Order that the Child is a Bastard, without mentioning the State of the Woman, whether single, etc.

Security to indemnify the Parish is proper.

Security shall not be given for the Performance of an Order, till Contempt of the first Order.

The same Term.

King *against* Bingley.

INDICTMENT against Defendant, that he unlawfully suffered his Fences to be down, to the great Damage, etc.
Exception; It is a Nonfeasance, and not indictable, therefore the Indictment was quashed.

The same Term,

Parish of Newark *against* Ruckworth.

MOTION to quash an Order of Removal.
It was an Order to remove the Children of *Ant. Wheelcroft* to————it being the Place of his last legal Settlement, and consequently of his Children.
Exception; This Consequence doth not hold, for they may have gained a Settlement elsewhere.
Mr. Justice *Eyre:* I think the Order good enough.
Mr. Justice *Probyn:* Though it be a strong Presumption that the Father's Settlement is the Place of the Children, yet I think for the Uncertainty you had best refer it to the Judges of Assize.
N. Judges cannot refer the Examination of a Settlement to Judges of Assize, without Consent of Parties.

The same Term.

Parish of Appotens *against* Dunkswell.

MOTION to quash an Order of Settlement.
The Fact was, a Woman marries a Stroller who leaves her, she is sent by an Order of two Justices to her Settlement, previous to their Marriage.

N. His Settlement did not appear.

This is a proper Order; see the Case of *Dunspots* and *Wisborowgreen. Contra;* that Case is not like this, for a Man born out of *England* can have no Settlement here, but this Man being born here, must have a settlement somewhere.

Chief Justice: As to the last Exception, it is said that upon hearing the Differences, etc. which is sufficient.

It does not appear here, but that the Wife is sent from her Husband; if it had been said that the Husband was dead, in this Case, and that no Settlement did appear, I should think the Order good.

Besides, if a Woman marry a Man who had a Settlement and never used it, and she never there, she cannot be said to be last legally settled there according to the Act, which requires forty Days; so if a Man had an Estate in a Parish, and do not live there, he cannot be sent there; but if he had lived there forty Days, he had been settled there. Quashed.

The same Term.

Parish of Millbrook *against* St. John's in Southampton.

MOTION to quash an Order for Removal of *W. B.* from *M.* to *St. J.*

Exception; The Appeal was to *Midsummer* Sessions, when it ought to have been to the *Easter*, which was the next Sessions, as appears from the Caption.

Chief Justice: We cannot determine it on View, because it depends on Fact; for the Order might not be served till after the *Easter*-Sessions was over, and till then they are not aggrieved.

And then is their Time to appeal.

This Exception in the case of *Risby* over-ruled.

Motion to quash an Indictment for exercising a Trade in *P.* in *Conwall*, not being Apprentice thereto.

Exception; It does not extend to Vills. 1 *Mod.* 26. But not allowed.

Hilary, First of King *George*, 1714.

King *against* Kingsmill.

ON Indictment to repair an Highway, the Court cannot grant a View by Consent, though a private Person prosecutes.

The same Term.

Parish of Stoke-Fleming *against* Berry Pomrey.

MOTION to quash an Order of Sessions for the Settlement of *Anne Ellford;* the Fact specially stated in the Order was, that *A. E.* a poor Child in the Parish of *Stoke-Fleming*, was bound an Apprentice to *S. Perry*, who was a settled Inhabitant, and Owner of some Lands which she had in the Parish of *Stoke-Fleming*, and there served about two Years; then *S. P.* removes from the Parish of *Stoke-Fleming* to the Parish of *B. P.* where she lived with her Son, but that coming without a Certificate, and being a Person of Ability she gained no Settlement there, and that *A. Ellford* served her there the Rest of the Apprenticeship; upon which the Sessions confirm the Order of Justices, by which she was settled at *B. P.*

It was urged, that as an Apprentice can only gain a Settlement in Consequence of his Master, he being not able, during his Apprenticeship, to do any Act to gain a Settlement; *A. Ellford* in this Case cannot gain a Settlement in *B. P.* where her Mistress had no Settlement, but must be settled at *Stoke-Fleming*, where it is admitted her mistress had a Settlement.

Besides, the Act of 3 and 4 *W* and *M.* says, that if any Person shall be bound an Apprentice

by Indenture, and inhabit in any Town or Parish, such Binding and Inhabitancy shall be adjudged a good Settlement.

This is not like the Case of an hired Servant, who gains a Settlement by his Service, though his Master has none.

Contra; it was urged, that as an Apprentice gains a Settlement in his own Right, not in Right of his Master, as a Child in Right of his Father, he may gain a Settlement, though his Master has none.

Chief Justice: It is admitted that a hired Servant may gain a Settlement in a Parish by Service, though not hired there; and I know no Difference in the Words of that Clause and this, for they are altogether as strong, *viz.* That if any unmarried Person, not having Child or Children, shall be lawfully hired into any Parish or Town for one Year, such Service shall be adjudged a Settlement; and the Order was confirmed.

The same Term.

Parish of old Newton *against* Stonham.

IF an Order be made which is not appealed against, it becomes absolute, and makes a Settlement.

The same Term.

Newark *against* Worsam.

CHIEF Justice said, that if a Man comes into a Parish by Certificate, and stays there till his Children actually become chargeable, then he by 12 *Ann.* shall be removed to the Parish which gave the Certificate, though he had not before any Settlement there.

Easter, First of King *George*, 1715.

King *against* Gully.

MOTION to quash an Order on *T. Gully* to maintain *S. Gully* his Daughter; the Order was, it appearing that *S. Gully* is a poor and destitute Person, we do order that *T. Gully* allow her two Shillings and six Pence a Week for her Maintenance, till the Court further order.

First Exception; This Order is founded on 43 *Eliz.* and she is not described to be such a Person as is intitled to Relief within the Statute; for it is not said that she is unable to work, etc. but only that she is poor and destitute, which is not sufficient.

Second; That the Continuance of the Payment till Court shall farther order, is unjust; because no further Orders could be made till the next Sessions, and before that the Father might possibly become unable to relieve her, or she may be able to work for herself. But not allowed; the Court being fittest to judge in that Matter.

Chief Justice: This Person is not brought within the Description of the Act; for she is neither said to be poor old, or poor lame, or poor blind, or poor impotent, or a Person unable to work, and one of these Disabilities is required by the Act; poor and destitute is uncertain and not a Description. Quashed unless Cause.

The same Term.

King *against* The Inhabitants of Brightwell.

AN Hiring three Weeks after *Michaelmas* to *Michaelmas*, and then an Hiring for one Year, and a Service for eleven Months, adjudg'd a Settlement, according to the Case of *Overton* and *Stivington*, 10 *W.* 3.

Note: Chief Justice said that if there was a Service for a Year, on a Hiring from Week to Week, and then a Hiring for a Year, and serving for forty Days, that he should adjudge

that a Settlement; Reason is, because till the last Statute was made, an Hiring for a Year, and forty Days' Service made a Settlement, in regard that the Hiring for a Year shewed that the Person was not likely to become chargeable, for that he was able to work, etc. So forty Days is a good Settlement to an Apprentice in respect of his Skill and Art, by which he is supposed unlikely to become chargeable: So a Person that has paid Parish Dues, or served Offices in a Parish, gains a Settlement by forty Days, because he is supposed a Person of Substance, and unlikely to become chargeable, who is so called upon; but the late Act requiring a Service for a Year as well as an Hiring, we think it sufficient if the Words be answered, considering this with the Design of the former Statutes.

Easter, Second of King *George.*

The King *against* King.

IT was moved by Mr. *Whitaker* to quash a Conviction grounded on the Statute of 5 *Anne*, *c.* 14, for keeping a Gun not being qualified.

The Exception taken was, that the Statute 5 *Anne* extends not to keeping a Gun; for the Words are, if any Person shall keep or use (not being qualified according to the Act) Tunnels, Hare-Pipes, etc. or any other Engine, for the destroying of Game, (omitting the Word *Gun*) shall forfeit five Pounds: So that the general Words *Or any other Engine*, must be understood to be such Engines as are directly for the Use, and can be for no other Purpose. Whereas a Gun is proper to be Kept for the Defence of a Man's House, and this Construction is inforced by 22 and 23 *Car.* 2. *c.* 25. for there a Gun is forbid expressly (tho' without a Penalty) by Persons not qualified.

To which *Parker*, Chief Justice, and *Prat* Justice, agreed and said, that this Act mentioning Tunnels, Hare-Pipes, etc. which are Engines framed for no other Purpose than for the Destruction of Game, and concluding with the General Words, *Or any other Engine*, these Words must be construed to mean such Engines of the same Nature as were before mentioned, especially since the Word *Gun* was omitted in this Statute, all the other Words in the 22 and 23 *Car.* 2. expressly mentioned, and that this Construction ought the rather to prevail, since a Gun is sometimes necessary for the Defence of a Man's House.

But Mr. Justice *Powis* and *Eyre* were of the contrary Opinion, for that it was called an Engine for Destruction of Game, in 22 and 23 *Car.* 2. and prohibited to be kept by that Act, and made liable to a Seizure, it shall be taken to be an Engine for Destruction of Game within the 5 *Anne*, that Act being made to enforce all other Laws against destroying the Game. *Note;* it was said by Lord *Parker* in arguing in this Case, that Walking about with a Gun with Intent to kill Game, will be Evidence of using it for that Purpose.

The Court being divided it was adjourned.

The same Term.

Parish of St. Peters *against* Hallowell in Oxford.

QUESTION was whether *Francis Milliton* being a certificate Person from St. *Peters*, and hired by *John Ploston* at *Lady Day* 1713, to serve him for one Year, should gain a Settlement in *H.* notwithstanding Statute 12 *Anne*, which says no hired Servant, coming by Certificate, shall gain a Settlement after 23d *July* 1713.

It was objected, that though the Hiring for a Year was before the Act, yet as the Service was not performed, consequently no Settlement gained before the Act, she should not gain a Settlement in H. and urged, that the Words of the Act imported as much.

Chief Justice: Here was a Service for forty Days after the Hiring, and therefore the Settlement gained before the Act was made, unless there be somewhat to defeat it; for if she had been hired in *H.* and served forty Days, and after her Mistress moves from one Parish to another, and stays not long enough in any for her to gain a Settlement, she shall have a Settlement in *H.* Shew Cause.

The same Term.

King *against* Parish of Limehouse.

AN Order for the succeeding Church-Wardens to pay sixty Pounds to reimburse the former Church-Wardens. This is improper.

In *Queen* and *Tawney, Mandamus* was sent to make a Rate to reimburse Church-Wardens, and upon the Return it was held improper. The 43 *Eliz.* has impowered Justices to make Rates to provide for casual Poor, but not to reimburse, that Act only directs that the Surplus raised by Church-Wardens shall be paid over, and does not suppose they can be out of Pocket; for they have Power to make as many rates as will reimburse during the Office.

Mr. Justice *Eyre:* An Order to reimburse out of Money to be raised would be wrong, as in Case of *Queen* and *Tawney.* But this is only a Direction to reimburse the Church-Wardens out of Monies that were paid over by the Overseers by Mistake, so that this was Money raised during his Office, and subject to the Account. Adjourned.

Trinity, 1 *George* 1715.

Parish of Alsly *against* Rumsly.

B. IS removed from *R.* to *A.* and adjudged likely to become chargeable to *A.* and there is no Adjudication that he is likely to become chargeable to *R.* the Place whence he is removed.

Court: We are not to remove a man from his Residence, unless it be plain that he is likely to become chargeable, and not argumentatively, because he is likely to become chargeable to one Place, that he is likely to become chargeable to another.

A Man may be likely to become chargeable to one Place, and not to another, on account of Work which he can never want there (as in Coal-Mines, etc.) which he may want in another. Quashed.

The same Term.

King *against* The Inhabitants of Brag.

AN Order of Justices is removed by a *Certiorari*, and there is a Variance between the Return and the original Order, *viz.* in the Original Order it is said, that *Francis Word* was a Servant in Husbandry, and in the Return of the Clerk of the Peace it is said, that he was a hired Servant. *Note;* The Parties consented to amend this.

Mr. Justice *Eyre* said that the Court never suffered any Amendment in the Body of the Order; that a Caption might be amended the same Term, but not even that in a second Term.

The Parties Consent signifies nothing, for that it was not an Amendment of anything transacted between the Parties, but of a Justice of Peace's Order.

The Master said it was never done.

The same Term.

Parish of Hitchin, Hotham *against* Sutton Balans.

FRANCIS EVERET the Son of *Robert Everet*, of *Otham*, is removed by Order of two Justices from *Sutton* to *Otham*, *O.* appeals to the next Sessions against this Order of the Justices, and on the Appeal, *O.* is adjudged to be his last legal Settlement, and the Order confirm'd; afterwards the Parish of *Otham* removed him, by the Name of *F. Everet* the Son of Robert *Everet* of *Hitchin*, by an Order of Justice to *Hitchin.*

In this Case it was resolved as formerly in the Case of *Ryslip*, *Hendon* and *Harrow*, that if a Person be removed from *A.* to *B.* and *B.* appeals against this Order, and it be confirmed

that Judgment is final, and they are tied down by it, so that they can never appeal on Pretence of a subsequent Settlement.

And that if in such a Case there be different Descriptions of the Person in the last Order, from what was in the former, and Affidavit be made that there is a Question about the Identity of the Persons, the Court will direct a Trial whether it be the same Person or not.

Hilary, Second of King *George*, 1715.

Parish of Elsing *against* The County-Gaol of Herefordshire.

A BASTARD was born in the County-Gaol.

Question was, whether the Settlement of the Child should be in the Parish where the Mother had a Settlement, or in the Gaol.

On Reference the Judges of Assize resolved the Settlement to be in the Gaol, and accordingly an Order was made by two Justices, which on Appeal to the Sessions, was quashed for want of Form, and a contrary Order made, which the Court was now moved to quash, and to make a new Order according to the Opinion of the Judges of Assize.

Chief Justice: It has been held that People in the House of Correction ought to be considered as Inhabitants of the Place they were of before; for they are put there only for safe Custody.

Resolved that the Settlement was with the Mother.

The same Term.

Stone's Case.

ORDER by Justices, that *Stone* should pay to ——— Parish, towards Maintenance of a Bastard Child of his, two Shillings and six Pence *per* Week, till he should be twelve Years old, and that then he should give five Pounds to put him out Apprentice, and farther, that he should give Security for the Performance of the Order.

Several Cases cited out of *Keble*.

Chief Justice: The Cases in *Keble* are not Law; they go upon a wrong Foundation, for in them it is supposed, that the Act was made only to relieve the Parish from the Burthen of such Children; but the Statute had other Views, for it is likewise that the Child may have somewhat to live on, and also for a Punishment to the Offender. And by the Court quashed as to the Security only.

The same Term.

King *against* The Inhabitants of Clerkenwell.

MOTION to quash a special Order of Sessions, reciting that there was an Appeal to them againsta Poor's Rate, that they referred it to two Persons to examine the Matter, and to report to them the Case, and what they should think proper to be done in it The Referees after Examination reported, and the Justices accordingly ordered the Rate to be in this manner; that all Persons who were Possessors or Occupiers of Land or Houses, etc. within the Parish, should be rated for so much personal Estate and Rents as they were charged for in the King's Tax Book, with an Exception of such as are likely to become chargeable, etc.

First Objection; That the Power of the Justices was delegated by them to another which they cannot do.

Secondly; That it was unequal, and not as it ought to be; for this having Reference to the King's Tax, no one by Virtue of this can be charged for anything he is not charged for in the King's Book; and though several will not be charged for so much as they ought, for there are several things which are not chargeable with the King's Tax, which are chargeable with the Poor's Rate, etc. as Charities, all personal Estates in the Funds, etc.

Besides, there are great Abuses in the King's Tax, several People not charged that ought; others with not so much as they ought, and others with more in Proportion to other People.

Besides, the Book is not to be come at by every one.

Thirdly; This Order is made without quashing that on which the Appeal was made, so that there are two Rates on the Parish instead of one, and they are now actually levying on the first.

Chief Justice: Justices cannot delegate their Power to any, but this is not so, for what is done is only to take off the Trouble of the Examination of the Court, and which is almost impossible for the Court to do, it is only in Assistance of the Court, and what they reported might be excepted against, by any one that imagined himself injured, and must be, as it was in this Case, the Act of the Court, by its agreeing to it, and ordering that the Rate shall be observed and levied.

These Persons were like Masters in Chancery. If the Justices have looked into the Rate referred to, it is the best and most proper way that they can take, to order that such a Rate or Book shall be observed; for though it may possibly be unequal for the Reasons given, yet it is probably the most equal that can be made; for it is impossible to make one that shall be in every Instance equal.

The Money in the funds seems considerable and apparent in the Parishes about *London*, because there are always some who have Money in them. But in others farther off and in the Country it is not; because in these they are scarce known, much less made use of. As to the making a new Rate, he said he supposed it was no more than altering the old one, by writing it fair in another Piece of Paper, which is better than by putting in that which is wanting in the Charge of some, and blotting out that which is too much with respect to others, in the old one.

Court ordered Counsel to be heard on both sides.

Easter, Second of King *George.*

St. Giles's *against* St. Margaret's Westminster.

A WOMAN having gained a Settlement marries a Foreigner.

Question, Whether she shall not so far partake of the Circumstances of her Husband, as to lose her former Settlement; for if she doth not partake of the Fate of her Husband, it will cause a Divorce.

Contra were urged the Case of *Dunspole* and *Wisborough Green*, and of *Hanny* and *Maston.*

And that in this Case the Man was dead, so that it can cause no Separation.

The Court seemed to think, That the Settlement is revived, being only in Suspence during the Life of the Husband.

Note; Chief Justice said in this Case, that if a Woman having a Settlement, marries a Man that has none, that if the husband dies she must be sent to her last legal Settlement before Marriage.

It was urged by Serjeant *Darnell*, that as her Husband was not removeable from the Place where he was, that she was settled at the Place where she last was forty Days.

But by *Chief Justice:* Where a Person stays forty Days in a Place, whence they have a Right not to be removed, that gains a Settlement; otherwise where they only stay in a Place because they do not know where to remove them.

Chief Justice said in this Case, that he did not know that a Foreigner had a Right to be maintained in any Place to which he came, but that they might let him starve.

Adjudged in *Hilary*, 3 *George*, That she should be sent to her Settlement gained before Marriage, though the Order affirmed as to her; but this Order sending a Child above seven Years old from St. *Giles's*, which was the Place of his Birth, to St. *Margaret's*, with the Mother, which was her last legal Settlement before Marriage, was quashed as to the Child.

Trinity, Second of King *George*, 1716.

Parish of Pancras *against* Rumbald, County of Sussex.

TWO Justices of Peace 3d *January* make an Order to remove a poor Person from *Pancras* to *R.* upon Suggestion that he rented not a Tenement there of 10*l. per Annum*, and after, *viz.* on the 5th of *January*, on further Information, make another Order in the Nature of a *Supersedeas*, and do thereby, as far as they can, to revoke their former Order; the Suggestion upon which that was made being false. Therefore,

It was moved, that the last Order in Nature of a *Supersedeas*, might be quashed, the Justices having no Power to make it.

Chief Justice: It is very proper for them, if they are misinformed, to supersede the Order made on such Misinformation.

It would be very inconvenient for us to quash this last Order, for that would make it in Effect irreversible, since they have acquiesced under the Validity of the *Supersedeas*, and slipt the Appeal.

Indeed it would make a Difference if the Man was actually removed upon the first Order. But this Order not being upon the face of it void, it is not proper to quash it; it should appear that he was removed.

There is no inconvenience in not quashing the *Supersedeas*, for you may go to two other Justices to remove the Man, if he be not well settled there.

Lord Chief Justice *Prat:* Before Removal the Justice's Authority is not executed, but after Removal it had been executed, and then the *Supersedeas* had been void, so nothing done in it.

The same Term.

Parish of Chatham in Kent *against* Shardon in Shropshire.

ORDER of Removal returned in Paper.

The Court seemed to think, not good Return, and Cause to quash, but the Parties not complying with what the Court thought reasonable (*viz.* to refer it to Judge of Assize) Court refused to quash though after referred by Consent.

Michaelmas, Third of *George*.

The King *against* Higworth, Wilts.

ORDER of Sessions to pay *A.* and *B.* being poor Persons, three Shillings *per* Week, so long as they shall continue poor.

First Objection; That it did not appear that there was any Appeal to Sessions; and that the Sessions had no original Power to make Orders for Relief, and likened to Cases of Settlements. But not allowed; for in Cases of Settlements, Order at Sessions is final, and hinders Appeal, but succeeding Sessions may alter Orders for Relief of Poor made in a former Sessions.

You will not find in any Act any Power, that either the Justices or Sessions have to make Orders for Relief of Poor, but they having taken upon them such Power, 8 and 9 *W.* 3. seems to admit it, and directs in what manner Poor shall be relieved, etc.

Secondly; The Order being to relieve *so long as they continue poor* is naught, but not allowed; for by *Chief Justice:* If they have Power to relieve a poor Person, they may relieve him so long as he continues poor, and the Order ought to be provisional, *i. e.* so long as the Cause of their Relief lasts, and it ought not to be absolute till the Order be repealed.

Thirdly; That it does not appear that they were impotent, etc. and unable to maintain themselves. Therefore quashed for the last Exception.

See the Case of the *Queen* against *Gully*, 86.

The same Term.

The King *against* Stoke Gumber.

JUSTICES make an Order, that whereas the poor had time out of Mind been relieved on *Saturday*, they should be relieved as usual on *Saturday*, and not on *Sunday*.

Motion to quash. But the Court said, that the Justices may order the Day of distributing Bread to be changed.

The same Term.

Parish of Workesworth *against* Basington.

ORDER of Removal was, Whereas it appears to us on Complaint, that such a one came into the Parish of *W.* contrary to Law, and is likely to become chargeable, we adjudge *B.* the Place of his last legal Settlement. On Motion to quash it, Objection, that there was no Adjudication that he was likely to become chargeable. But not allowed; for there are only two Adjudications, and it is included under the first, and by Chief Justice, it is one of the best Orders I ever saw.

By Lord Chief Justice *Prat* it had not been well, whereas it appears to us by Complaint. Confirmed.

The same Term.

Parish of Upton in Worcestershire, *against* Chepel Honiborn in Gloucestershire.

MOTION to quash an Order of Removal.

First Objection; Complaint that *A.* is likely to become chargeable, but not said that he came into the Parish against Law, it is ill, though in the Adjudication it be said so, for the Adjudication cannot help it more than a Conviction can help an imperfect Information, or than the finding a Jury can help an immaterial Issue. But not allowed; for Complaint that he is likely to become chargeable to *Chepel Honiborn*, but only that he was last legally settled at *Upton*, and for this Cause quashed, unless Cause.

The same Term.

Parish of Woverton *against* Stoke Cultrum, Cumberland.

SESSIONS on Appeal discharge *Woverton* from keeping ——— and send her to *Stoke Cultrum*, to be there provided for according to Law.

Objection; That it is ill because not conclusive.

Chief Justice: It is very well, for it is no more than that while she stays there they should provide for her as by Law they ought, and does not conclude them from removing her elsewhere.

The same Term.

The King *against* Parish of Pincehorton, *Oxford.*

AGREED in this Case, that a Wife is to be sent to her Husband's Settlement though she never lived with him there.

Note; Order was, Whereas *A.* was born in such a Parish, we do therefore adjudge him to be last legally settled there;

By Mr. Justice *Eyre* held well, Birth being a good Foundation of Settlement, and we are not to imagine Cases (as that his Father or he might do some Act to gain a Settlement elsewhere) to make it ill.

The same Term.

The King *against* Twiford.

ORDER to pay over to succeeding Overseers eight Pounds, quashed, because not said, Wherefore, etc. and there being a Note given, by Order of Sessions, for the Payment of this Money,

By Mr. Justice *Eyre*, the Order being quashed, the Note must be delivered up.

The same Term.

Parish of Trinity *against* Shoreditch.

IT was agreed that *Tanner* should serve *Green* as a *Barber* for seven Years, and in order thereto was to be bound to *Trewby* a Vintner, and accordingly was bound to *T.* and served *Green* three Years in *Trinity* Parish.

Adjudged well settled at *Trinity*, *Trewby* being as a Trustee for *Green*, and the Service to *Green* is as much within the Act as if bound to him.

In like Manner as where an Apprentice is turned over, in which Case the first Master is as a Trustee for the second, and the Place where such Apprentice lives forty Days is the Place of his Settlement.

The same Term.

The King *against* Bond.

INDICTMENT on the 10 and 11 *W.* 3. for erecting a private Lottery: quashed, for there is a Penalty given by the Statute, and a Method chalked out by the Statute, *viz.* by Action to recover it.

The same Term.

The King *against* Gill.

EXCEPTION to an Order of Sessions, that an Apprentice was discharged in the Absence of his Master, at least it did not appear that the Master was summoned or was present, therefore the Order of Sessions was quashed for this Exception,

Easter, Third of King *George*, 1717.

The King *against* Barnes.

JUSTICES at Sessions, without Complaint, make an Order for the setting aside an Assignment of an Apprentice, and that the old Master provide for him. It being moved to set aside this Order, *Glyde* Serjeant urged in Maintenance of it, that it was not a judicial Order, but only a Regulation, and no more than the Law said. By *Parker*, Chief Justice, Sessions cannot set aside an Assignment, and the Master of a Parish Apprentice may assign him over as well as any other. The Jurisdiction of the Justices extends no farther than to the Person of the Master, to force him to take care of his Apprentice; but in what manner he does it, whether in his own House or otherwise, is nothing to them.

In the Indenture the Master covenants to provide for and instruct; does he not answer the Covenant in turning him over to another who does provide for and instruct him?

But if the Assignee of the Apprentice does not provide for him, the first Master may be compelled to do it, and he may take his Remedy over. Quashed.

The same Term.

The King *against* The Parish of Stoke Guerry.

AN Order to Pay Money to a poor Person, without saying that he was poor and impotent, and not able to work, (which is the Description given in 43 *Eliz.* of those Persons who are to be relived with Money) was quashed on the Authority of the Cases of the King against *Gully*, *Easter*, 1 *George*, and of the King and *Highworth*, *Mich.* 3 *George.* Cases cited 1 *Keb.* 489. 2 *Keb.* 643, 744. 5 *Mod.* 197.

The same Term.

Parish of St. Olives Old Jury, London, *against* Mile-end, Middlesex.

IT was moved by Mr. *Corbet* to quash an Order of Sessions, in which the Case being specially stated, it was thus.

A Cobler took a Stall in *St. O.* just big enough for himself to sit in, at ten Pence *per*

Week, he afterwards took one *John Owen* an Apprentice, who served him in the Street, and ran of his Errands for six Months, and both the Master and the Apprentice lodged out of the Parish of *St. O.* and each of them in different Parishes. The Sessions adjudged this to be a good Settlement in *St. O.*

Serjeant *Darnel* urged in Maintenance of this Order of Sessions, that the Service and not the Lodging is esteemed the Inhabitancy, and likened it to the Case of a hired Servant, to a Sojourner who gains a Settlement by Virtue of his Service; besides that the Service is notorious, whereas the Lodging is private; that it was not necessary to lie in a Parish to make one an Inhabitant; for a Person possessing Lands, though he lives out of the Parish, is an Inhabitant for Repairs of the Church.

Parker, Chief Justice: Is the Cobler an Inhabitant by Virtue of his Stall, or a Resiant that may be summoned to the Court Leet? My Lord *Coke* says, that where a House stands in two Leets, the Owner is Resiant in that Leet where his Bed stands.

This is not like the Case of a hired Servant to a Sojourner, for a Sojourner is an Inhabitant. A Porter plying at the Corner of a Street may as well give an Apprentice a Settlement in the Parish where he plies.

A Man possessing Lands in a different Parish from that in which he lives, may stand in the Place of an Inhabitant, to pay as such, but is not properly an Inhabitant.

Inhabitancy is a Qualification requisite for an Apprentice to gain a Settlement. I do not see that there is a Settlement in any of these three Parishes, for he was not with his Master. Quashed by the Court.

Easter, Third of King *George.*

Parish of St. Andrews *against* Parish of St. Brides.

UPON a special Order of Sessions, the Case appeared to be, that one *Elizabeth Francis* being Covert, parts from her Husband, and after six Years Separation thinking her Husband was dead, marries one *Don*, and has eight Children all born in *St. Mary-overs*, whereof three are living, and christened by the Name of *Don; Don* the second Husband dies, and nine Months after his Death she moves into the Parish of *St. Andrews.*

Upon a Question at the Sessions, in what Parish these three Children were settled, they adjudged them to be settled in *St. Brides*, the Place where her first Husband was last legally settled. (*Note;* the Order did not set forth that he was then an Inhabitant there.) *Note;* it appeared by the Order that he had not seen her for seventeen Years, but that they had both lived in *London* all the while.

It was moved by Mr. *Birch* to quash this Order of Sessions, for that the three Children were Bastards, and were therefore settled at the Place of their Births. *Salk.* 123, was cited as a Case in point, where it is said, that if a special Verdict find that the Husband had not Access after Separation by Agreement, the Issue is Bastard, for such Finding destroys the Presumption that he had Access. So here the Order setting forth that he had not seen her seventeen Years, but had lived with another Man, etc. sufficiently destroys the Presumption that he had Access, for the special Matter set forth in the Order is as strong as the Finding of a Jury.

It was insisted by Mr. *Morly, contra*, that the Husband being within the four Seas, the Law would presume Access, 7 *H.* 4. *fo.* 9. 1 *Ro.* 358, and likewise insisted that the Wife was not good Evidence, it being against her Husband. But not allowed, for the Parishes are only concerned.

By *Parker*, Chief Justice, this differs not from a special Verdict as to the Presumption; if a Woman take a second Husband and live with him, why should not the Law look upon the Issue as his, especially when they are baptized as his Children by his Name.

Besides, the Presumption holds only till the contrary is proved, and here is as strong a Proof as Possible.

The Order was quashed *nisi*, as to the Children, and *the Settlement of the mother was not controverted.*

Note; It was formerly resolved in the Case of the Queen and Inhabitants of *Westminster*,

that it shall be presumed that a Child born after a Divorce from Bed and Board, is a Bastard, unless the contrary be proved on the other Side. See *Co. Lit. Ab.* 329, 33 *a.*

Note also, that in this Case *Parker,* Chief Justice, said that he did not see how these Children, if they had not been Bastards, *could have a Settlement in* St. Brides, *they never having been in* St. Brides, *nor sent thither* (for ought appeared in the Order, it being only said, that *Francis* was last legally settled there, and not that he was then an Inhabitant in *St. B.*) while the father was there, and "That they could not be sent to a Place, where the Father had only a Right to a Settlement, and likened it to the Case where a Man has an Estate in a Parish, he cannot be sent thither, unless he had lived there forty Days, but that if the Children had been there with the Father forty Days, then they would have had a good Settlement."

Trinity, Third of King *George,* 1717.

Parish of Fishel *against* Angor.

IT was objected, by Mr. *Reeve,* to an Order of Sessions, charging Occupiers of Land in *A.* (which is really an Extraparochial Place) with a Contribution to the Relief of the Poor of the Parish of *F.* in another Hundred, that it did not appear they had been before two Justices, who had adjudged that there was no Place within the Hundred which was able to assist the said parish, which by the 43 *Eliz.* is required, before the Justices at Sessions can have any Jurisdiction to charge Persons living out of the Hundred: But this objection was not allowed.

For by the Court, the Statute gives two original Jurisdictions, and for two Purposes, *viz.* to two Justices to charge the Persons within the Hundred, and to the Sessions to charge Persons out of the Hundred; and the Sessions do not proceed on Appeal, but on their own Jurisdiction, and there is no occasion for any other Declaration than such as to intitle them to a Jurisdiction; and that is sufficiently set forth in the Order, it being said that the People within the Hundred are unable, etc. besides, the Justices doing nothing is sufficient to give the Sessions a Jurisdiction, for that it appears sufficiently to them, that the Hundred is unable. To what end should two Justices adjudge the Hundred insufficient? for notwithstanding such Adjudication; if any other two Justices should charge any Persons within the Hundred, that would be a good Charge, and exclude the Jurisdiction of Sessions, for the said two Justices are only Justices within the Division; besides an Adjudication is only to maintain their own Acts, and not to maintain the Acts of others.

In the Case of Apprentice there is a Direction to two Justices to endeavour to reconcile the Master and Servant, etc. yet it has been adjudged that they may go in the first Instance to Sessions, although there is something prescribed to be done by the Justices; *a fortiori* here, there being nothing prescribed to be done by the Justices, the Hundred being unable, etc.

The same Term.

Parish of South Sydenham *against* Lamerton.

A AND *W.* were removed from *Lamerton* to *South Sydenham,* having there taken a Lease of Lands of the Value of thirteen Pounds *per Annum,* for thirty-three Years, determinable on three Lives, of which Lands to the Value of four Pounds ten Shillings lay in *S. S.* the Messuage and the rest lay in *Lamerton,* and the Rent reserved was but seven Pounds.

Two Justices adjudged that *A.* was settled in *S. S.* where he had an undoubted Settlement previous to the Lease, which Adjudication was confirmed by the Sessions. Mr. Serjeant *Glyde* moved to quash this Order.

Mr. *Reeve,* in Maintenance of them, urged that the Statute 13 and 14 *Car.* 2. *cap.* 12. says, at a *Person* having a Tenement under the Value of ten Pounds, etc. and that the reserved Rent must be the Rule and Measure of the Value, and though the Tenement be worth thirteen Pounds, that made no Alteration.

By the Court: The Quantity of the Rent is not material, but the Value of the Tenement.

If there be a Lease of lands worth ten Pounds, and a fine be paid, and twenty Shillings only reserved, it is the same thing.

The Difficulty is that the Lands, to the Value of ten Pounds, lie not all in one Parish; but if the Tenement be intire, though the Lands be in different Parishes, it seems to be a Tenement of ten Pounds *per Annum* where the House is; otherwise where the Tenements are distinct and lie in different Parishes, as if a Tenement of eight Pounds lie in one Parish, and a Tenement of three Pounds in another.

A Person that can rent ten Pounds *per Annum* is presumed unlikely to become chargeable, therefore it is hard to send him away. But by Mr. Justice *Eyre*, under ten Pounds, and likely to become chargeable, are convertible Terms. Orders quash'd.

The same Term.

Parish of St. Mary Colechurch *against* The Parish of Radcliff.

J. COLESON was Apprentice to *A.* a Seafaring Man, and served him a Quarter of a Year, at his House in *St. Mary Colechurch* in the Day-time, but lodged on board a Ship in the *Thames.*

The Justices at Sessions adjudged this to make a Settlement in *St. Mary Colechurch.* Whereupon Mr. Serjeant *Corbet* moved to quash their Order, and likened it to the Case of *St. Olives, Old Jury.*

By the Court: The Words of the Act are *Binding and Inhabitancy*, and a Man is properly said to inhabit where he lodges; so that when a House stands in two Leets, the Owner is Resiant in the Leet where he lies, and likened it to the Case above cited. If it had been set forth that he went on board to watch and do Service for his Master, and to take Care that the Goods in the Ship were not imbeziled, then by Chief Justice, he being in his Master's Service every Day, that would make a Settlement, and so it seemed to *Prat*, Justice. But in this Case it being only said, that he lodged aboard a Ship in another Parish, Order quashed.

Hilary, Fourth of King *George.*

Anonymus.

AN Order of Removal being in this Form, *viz.* Whereas Complaint hath been made to us, that *Anne Stamp* is come into the Parish of *T.* and that she *may become* chargeable, etc. on Examination, etc. we do believe the same to be true, and that she was last legally settled at *W.* Quashed, for the Act enables Justices only to remove Persons *likely to become* chargeable, and not Persons that Possibly may be chargeable, for no one can say who may not be chargeable.

Note; Exception was likewise taken to the Adjudication; but the Court took no Notice of that, the Order being naught for the other Exception.

Michaelmas, Fourth of *George.*

The King *against* Marriot.

TO a Conviction for keeping a Greyhound, objected by Serjeant *Pengelly*, that the Defendant not being qualified, etc. kept a Greyhound, but does not say that he had not a hundred Pounds a Year, nor was the Son of an Esquire, as he ought to have done, according to 1 *Saund.* 262. *West's Prec.* §. 128, 270, 248.

Mr. *Reeve* urged, that this Conviction being on the fifth of *Anne*, pursues the Words of the Statute, for the particular Qualifications are not there mentioned, and that the Cases cited are upon other Statutes, where express Qualifications are mentioned.

Mr. *Pengelly* replied, that the latter Statutes are Statutes of Reference to 23 *Car.* so that they must be considered together, and therefore it will be the same as to this, as if it were a Conviction on 23 *Car.* for where one Statute creates an Offence, and another gives the Penalty, both must be recited. *Plowd.* 206. *Cro. Eliz.* 750.

The Chief Justice inclined that the Conviction was good, notwithstanding this Exception, for the Statute is negative, and it lies on the Defendant to shew which of the Qualifications he comes under.

But another Exception was taken by Mr. Justice *Eyre, viz.* that the Evidence given is that the Defendent is not qualified by Law, etc.

And we cannot intend that the Witness did swear these Words, that the Defendent being a Person not qualified, according to the Laws of the Land, to keep a Greyhound, did on such a Day keep, etc. for the want of Qualification depending upon particular Circumstances required by the Statute, they must be sworn, and the want of Qualification must be adjudged as the Consequence. *Prat* Justice: This is not right, if we suppose that those were the very Words of the Evidence, but doubted whether this might not be taken for the Substance, and therefore should be understood to be the Collection of the Justices upon the Evidence before them.

The Chief Justice thought it a Strong Objection, and said, that the Justices ought to have set forth the Sense of the Evidence before them, and not to make a bare Conclusion upon it of their own.

This Conviction was quashed by the whole Court, upon the Authority of the Case of the Queen and *Haward.*

Easter, Twelfth of Queen *Anne.*

Parish of Willerton *against* Waddington.

AN Order for the Removal of a Certificate Person must be grounded upon a Complaint, that the Person is *actually* chargeable; the Adjudication must be, that he is chargeable, and for want of such Adjudication this Order was quashed.

The same Term.

The King *against* Borne.

IT was moved to quash an Order of Sessions for the Defendant, who was ordered to pay twenty-seven Pounds in his Hands to the succeeding Overseers, six Years afterwards.

Objection; The Sessions have no Authority to take Account, but that is given by 43 *Eliz.* to two Justices. But not allowed; for by §. 6. an Appeal is given to the Sessions, and in so general Terms that an Appeal lies.

Then it was objected, that he should not, at this Distance of Time, be compelled to pay Money over, because the Inhabitants who were intitled to the Benefit of it may be altered.

And the Case of the Queen and the Inhabitants of *Ware* was cited, where an Order to reimburse Overseers sometime after the Expiration of their Office was quashed.

Because the Inhabitants may be changed, and so Persons charged who were not at first liable; for an Appeal is given, and no Time is limited for it.

But by the Chief Justice, if Overseers neglect to make a Rate to reimburse themselves, according to the Authority given them by Act of Parliament, for their Benefit, they shall not come a Year after, and have such a Rate, because the Inhabitants may be changed, and Persons come into the Parish who were not liable: But if an Overseer has Money in his Hands, he shall be forced to pay it over at any Time after; therefore the Order was confirmed.

Easter, Fourth of King *George.*

The King *against* The Inhabitants of Ivinghoe in the County of Bucks.

ON a special Order of Sessions the Case appeared to be, that one *Nich. Young* being legally settled in the Parish of *Solesbury*, was at *Michaelmas* 1715, hired into the Parish of *Ivinghoe*, by *John Knight*, to serve him as a Shepherd till *Michaelmas* following; that he entered upon the Service and continued with *Knight* till *Lady-Day*, who then paid him Half a Year's Wages, and let the Farm to one *Smith*, who entered and took all the Stock and Servants, and in Harvest Time took *Young* off from keeping Sheep, and set him to Har-

vest Work, for which he paid him five Shillings extraordinary, and at the Year's End paid him the other Half Year's Wages: That *Knight*, when he left the Farm, never told *Young* he was no more his Servant, nor were there any Transactions between them towards Dissolving the Contract, nor did *Young* ever make any new Contract with *Smith* for the last Half Year; and the Justices adjudged the Settlement in *Ivinghoe*, where the Service was.

Mr. *Denton* moved to quash this Order, because to make a Settlement there must be both a Continuance of the Contract and Service, the 8 and 9 *W.* 3. *cap.* 30. requiring that the Party continue in the same Service for a Year; but here both the Contract and Service are broke off at the Half Year's End, and cited the Case of *Rudgwick* and *Dunsfold*, *Mich.* 9 *Anne*, where there was a Hiring and Service for a Quarter of a Year, then for Half a Year, and afterwards for another Half Year; all which was held to give no Settlement.

Mr. *Reeve* on the other Side insisted, that it being expressly stated, that there was no new Contract, the first must be taken to have a Continuance all the Year, and that if *Smith* had not paid *Young* the last Half Year's Wages, no Doubt (as this Case stands) but he might have come upon *Knight* for it; that the five Shillings shews that he was *Knight's* Servant all along, for otherwise *Smith* had no Occasion to give him that extraordinary Pay. The Statute does not require an Identity of the Contract, for *Hill.* 10 *Will.* 3. Parish of *Overton* against *Steventon*, an Hiring and Service for Half a Year, and then a Hiring for a whole Year, and Service for Half a Year was held to give a Settlement. So *Easter*, the first of King *George*, the King against the Inhabitants of *Bridewell*, there was an Hiring and Service for three Weeks after *Mich.* 1712, to *Mich.* 1713, then an Hiring to the same Master, and a Service for eleven Months, and this adjudged to gain a good Settlement.

That by Statute 3 and 4 *W.* and *M. c.* 11. a *Binding* and *Inhabitancy* shall gain a Settlement; so that by the Words a Binding is required, and yet *Trinity* 13 *W.* 3. The King against the Inhabitants of *Eccles* in the County of *Norfolk*, it was held, that if the Master to whom the Binding was, assigns his Apprentice over to another, a bare Inhabitancy forty Days with the Assignee gives a Settlement; that in this Case there is a Hiring and Service for a Year in the Parish of *Ivinghoe*, and that is sufficient.

That they did agree the Word *Same* was a Word of Relation, but that it would be satisfied by referring it to the same Place; that those Statutes have always had a liberal Construction, as that Bearing Offices in a Parish amounts to Notice; so the Statute says *any unmarried Person having no Child or Children*, and yet a Person, having a Child which was grown up and no Incumbrance to him, was held to be within the Statute, *Trinity*, the twelfth of Queen *Anne*, between the Parishes of *Silveston* against *Ashton;* so *Easter*, the tenth of *Anne*, the Queen against Parish of *Aldenham*, and *Michaelmas*, first of *George*, *St. Saviour's Southwark*, Marriage within the Year was held to be no Hindrance of Settlement.

By *Prat*, Chief Justice, The Statute requires two Things, an Hiring and a Continuance in the same Service for a Year. There can be no Doubt but that in this Case there is a complete and perfect Hiring for a Year. But the Question turns upon the Service, Half of it was a Service to *Knight*, and the rest was in fact a Service to *Smith;* but there being no new Contract with *Smith*, nor any Dissolution of the first Contract with *Knight*, it seems considerable, whether the whole shall not be taken to be a Service to *Knight;* as if I lend my Servant to a Neighbour for a Week, or any longer Time, and he goes accordingly, and does such Work as my Neighbour sets him about, yet all this while he is in my Service, and may be reasonably said to be doing my Business.

If the first Contract be not discharged, it must have a Continuance, and under it the Servant is intitled to demand his Wages of *Knight* his first Master, and the five Shillings given him by *Smith* is no Argument to the contrary, no more than if (in the Case I put before) my Neighbour had given my Servant a Gratuity for his extraordinary Trouble; what Agreement there was between *Knight* and *Smith* does not appear. But here is no Act done by the Servant that shows his Consent to change his Master, and therefore I take this to be a Service for the whole Year, pursuant to the first Contract, and consequently the Settlement is at *Ivinghoe* where the Service was; to which the three other Justices agreed, and the Order was confirmed.

Michaelmas, Fourth of King *George*.

Parish of Mursly *against* Gainsborow Bucks.

ON Motion to quash an Order of Sessions of Removal, the Fact being specially stated in the Order, appeared to be thus.

That Sir *J. Fortescue* in 1687, demised a Cottage of thirty Shillings per *Annum* to one *Eden* for ninety-nine Years, reserving twelve Pence Rent, *Eden* assigns the Term to one *Gadden* in Trust for his Wife for Life, and then in Trust for his Son during the remainder of the Term, the Son dies and leaves a Wife, who as Administratrix to her Husband became intitled to this Term, and she grants this Cottage for twenty-four Years, excepting two Rooms, after intermarries with *Chappel*.

Question was whether *Chappel* as Husband of an Administratrix, who was intitled to the Trust of a Term only, and being intitled to a Chattel in another's Right only, was removeable by 13 and 14 of *Car.* 2.

Mr. *Denton* and Mr. *Darnel*, Serjeants, insisted that he was not removeable by the Intent of the Statute 13 and 14 *Car.* 2. and insisted likewise on the Authority of the Case between the Parishes of *Ryslip* and *Harrow*, 10 *W.* 3. wherein it was adjudged, that a Person seised of a Freehold, of ever so small a Value, could not be removed, and upon the Case of *Harrow* against *Edgeware*, *Easter* 11 *Anne*, where a Copyholder for Life, of a Cottage of twenty-five Shillings *per Annum*, was held to be irremoveable; and insisted, that to be settled, and to be irremoveable, are convertible Terms.

By the Court it was adjudged, that this Case was not within the Statute, (which impowers Justices to remove Persons coming to settle in a Tenement under ten Pounds *per Annum*) for that is to be understood of weak and conventionary Renters, and not to prevent Persons from settling on their own Estates, but only to prevent Persons from removing from one Parish to another, for the Advantage of Commons, etc. and that no Person could be removed from his own, and that there was no Difference, as to this Point, between a Lease for Life or Years, and that the Value of the Estate that a Man had in his own Right, was not material, and that whether the Right devolved upon a Man by Descent, Purchase, or as Administrator, etc. it was the same, so that it was his own.

And they held that the Case of a Copyholder was a stronger Case, for that a Leasehold, in the Eye of the Law, is a greater Estate than a Copyhold, which is looked upon but as an Estate at Will; and in this Case, they looked upon the twelve Pence reserved to be only as an Acknowledgment, and therefore quashed the Order of Sessions for the Removal of *Chappel*.

Easter, Fourth of *George*.

The King *against* Tipper.

OBJECTION to an Order of Sessions on the Defendant, as Father in Law, to pay two Shillings and six Pence *per* Week, for the Relief of his Son's Wife, the Complaint is made that the Daughter is poor and unable to work, and that the Sessions do adjudge the Father of Ability, but do not adjudge the Daughter to be poor and unable to work.

Order quashed *nisi*; for the Sessions must adjudge the Party to be impotent before they can order Relief; and it was said by the Court, there is no Difference between this and the common Objection to Orders of Removal, that there is no Adjudication that the Person was likely to become chargeable, which has been always held to be fatal.

Trinity, Third of *George*.

The King *against* The Inhabitants of Haughton.

THERE was an Hiring and Service from *Ash Wednesday* to *Christmas*; at *Christmas* the Servant went home to his Father, (who lived in another Parish) took his Cloaths with

him and staid a Week, then he returned, and was hired to and served the same Master for eleven Months, then he went home again for a Week, and returned and served the other eleven Months; and it was held that all this was done by Agreement of the Master and Servant to prevent a Settlement.

By the Court: It has had its Effect, we cannot interpose, but it is proper the Legislature should, the Statute expressly requires an Hiring and a Service for a Year, and therefore one Hiring and a Service for eleven Months, gives no Settlement. The Reason of hiring Servants at first for eleven Months only, is because the Servant may prove idle and good for nothing, and therefore the Master in Prudence avoids bringing a Charge upon the Parish, till he has had Experience of the Diligence and Fidelity of his Servant, and when he has had eleven Months Experience of his Diligence, etc. then if he hires him a second time, that is grounded upon his good Service during the former Hiring, but still this second Hiring must be as full as if the first Hiring was out of the Case; then the second Hiring would stand in the same Parity of Reason with a single Hiring and Service for eleven Months, which no body can say will gain a Settlement.

And no more can any subsequent Hiring of the same Nature.

If there was any Fraud, the Justices should have examined into it, for we cannot judge of the Fact, but the Law upon the Fact.

Hilary, Fifth of King *George.*

The King *against* The Parish of Westwoodhay.

AN Hiring from the *Thursday* after *Michaelmas* to *Michaelmas* following, was adjudged to give no Settlement upon the Authority of the Cases of *Frensham*, and *Pepperhaw*, and of *Haughton* and *Renton;* for by *Prat*, Chief Justice, there must be a strict Construction of the Statute, unless there be a Fraud, and that must come from the Justices below, for we cannot adjudge it, and therefore the Order adjudging such Hiring to give a Settlement, was quashed.

The same Term.

The King *against* The Inhabitants of Waldershall, in the County of York.

ORDER of Sessions, that the Township of *W.* shall maintain the Poor according to the Direction of the 13 and 14 of *Car.* 2. was quashed; because there is no particular Direction to any body, but it leaves the Construction of the Act at large; and because the Sessions had no Jurisdiction to make such Order originally.

The same Term.

The King *against* The Inhabitants of Aldermanbury.

IT was objected to an Order of Sessions for the Settlement of *A.* that it was said that on Appeal, etc. without saying that the Appeal was made by Church-Wardens, etc. or by any Person aggrieved.

After Consideration of this Objection, *Prat*, Chief Justice, upon the last Day of the Term, delivered the Opinion of the Court to be, that the Order was well enough, for that there was a strong Intendment that the Appeal was made by the Parties aggrieved, but declared that the Opinion of the Court was mostly governed by the Precedents, which were most of them in this Form, and therefore to avoid the Inconvenience of shaking many other Orders, this was adjudged good, and the Chief Justice declared that it was hard to distinguish this from the common Objections, to Orders of Settlements made on Complaint by Justices, without saying of Church-Wardens, etc.

The same Term.

Anonymus.

OBJECTED by Mr. *Morly* to an Order for the Removal of *Ross* and his Family from *Fawly* to *St. Mary Kalandar's.*

First, The Adjudication was, that *Ross* and his Family were likely to become chargeable, and that *Family* was too general. Quashed as to Family.

Secondly, The Adjudication is, that he was last legally settled as an Apprentice at *St. M. K.* without saying that he had lived there forty Days, which is requisite to give him a Settlement there as an Apprentice. But not allowed; for they need not be particular. The Court will intend that he has lived long enough there to make the Adjudication good.

Trinity, Fourth of *George.*

The King *against* Arnold, etc. at *Nisi Prius* in Middlesex, before *Prat*, Chief Justice.

INDICTMENT against Defendants, for that they being Church-Wardens, and two others, Overseers of the Poor duely appointed, did refuse to join with the others in making a Rate; and the Chief Justice held the Prosecutor to shew an Appointment by two Justices, as the Statute directs, and rejected Parol Evidence; because the Court must judge by the Instrument whether it be sufficient.

The same Term.

Parish of Wittenham *against* Cookham Berks.

A WOMAN was by Order of two Justices removed from *Binfield* to *Cookham*, and *Cookham* made no Appeal against the Order; whereby it became conclusive to *Cookham*. She was afterwards removed from *Cookham* to *Wittenham*, and there dropt a Bastard Child; and upon this Special Case it was adjudged by the Court of King's Bench, that the Settlement of the Child (the Mother being illegally removed from *Cookham* to *Wittenham*) was at *Cookham*, where the Mother was legally removed.

The same Term.

Parish of Stallingborow *against* Haxley, in the County of Lincoln.

OBJECTION by Mr. Serjeant *Hawkins* to an Order of Removal, *unless the Party showed Cause to the contrary.*

First, That it was conditional, and not absolute, as it ought to be, such Orders being in Nature of a Judgment, and objected likewise that there could be no Appeal from such Orders.

Secondly, That there was no Adjudication, but only said, that we on Examination *do believe* the same to be true, and a Man may believe a Thing on uncertain Evidence; but if it had been, that it does appear to us, etc. it had been well enough.

By the Court both Exceptions were held fatal. The Order quashed.

The same Term.

Parish of Great Kimble *against* Hanslope, Bucks.

OBJECTED to the Order of Removal, that the Examination was but by one Justice, whereas it ought to have been by both Justices, and for the Purpose, *Salk.* 489 was cited as a Case in Point, and therefore, though in another Case moved this Term, the Court inclined to think such Examination well enough, yet a Rule was made to show Cause.

Michaelmas, Sixth of *George.*

Ivinghoe, Bucks, *against* Stonebridge, Bedfordshire.

UPON an Order of Sessions, the Case specially stated was, That *William Plowers* was bound an Apprentice to one *Emerton* a Taylor, then being a settled Inhabitant of *Ivinghoe*, after some Time *Emerton* and his Family, with *Plowers*, removed to *Stonebridge*, *Emerton* having a Certificate from *Ivinghoe*, according to the Statute. In some short Time *Emerton* purchased a House in *Stonebridge*, and he with *Plowers*, his Apprentice, lived in the said House the last six Months before the Expiration of the Apprenticeship, which ended 1719.

Plowers married and died, leaving a Wife and Children, which by two Justices and Sessions were settled at *Ivinghoe*, on Account of his Apprenticeship there; and now these Orders being returned by *Certiorari*, Mr. *Denton* moved to quash them, and cited the Case of *Becklugh* and *Eastwoodhay*, in *Easter* Term in the fifth Year of King *George*, where the Court held, that a Certificate Man marrying a Woman, having forty Shillings *per Annum* Copyhold, and living upon it gained a Settlement by such Marriage, notwithstanding the Certificate.

And the Court made a Rule to show Cause why it should not be quashed.

The same Term.

Parish of Ratcliff Tully.

AN Order to remove a Woman and her Children under seven Years old, to the Parish of *R. T.* her late Husband having been hired there as a Servant for a Year.

The Exception was, that it did not appear upon the Order that the Woman was married since the Hiring, and if she was married before the Hiring, then a Service on such Hiring would not gain a Settlement. But by the Court, We will never intend any Thing to set aside an Order, but presume every Thing in Favour of it to make it good.

The same Term.

Stretton in the County of Rutland *against* Sommerly in the County of Leicester.

TWO Justices in *Lincolnshire* send a Pauper from *Witham*, in that County, to *Sommerly* in *Leicestershire*, Sessions confirmed the first Order; in two Months after two Justices of *Leicestershire* send him to *Stretton* in *Rutland*, and this Order being removed, was held ill; because an Order of Confirmation is binding to all the World, as in *Salk.* 472.

Mr. Justice *Eyre* said, that my Lord *Holt* made a Rule that no *Certiorari* should be granted to remove an Order of Settlement till after an Appeal, and it would be well if observed.

The second Order by two Justices here was within two Months after the Confirmation, and so very improbable that a new Settlement should be granted. Second Order quashed.

Hilary, Fifth of *George* the Second.

The King *against* Church-Wardens of Hexam.

TWO Justices make an Order on the Church-Wardens for the Maintenance of a Bastard Child, the Mother not being able to maintain it, and the Father not being known, and the Child likely to perish. Order the Church-Wardens to maintain it till the Mother shall be able to provide for it. Did not appear on Oath that the Child was born in the Parish, neither was there any Adjudication in the Order.

A Rule was granted to shew Cause why Order should not be quashed, which was afterwards made absolute.

The same Term.

The King *against* Horwell.

MR. *Reeve* moved to quash a *Certiorari* granted to remove some Order of Sessions relating to the Repair of the Highways, for the following Act of Parliament, 3 and 4. *W.* and *M. cap.* 12 *page* 23. restrains bringing a *Certiorari*, and a Rule granted to shew Cause.

The same Term.

Parish of Epingham *against* Wisbich, Ely Isle.

REMOVAL on 16th of *June*, and on third of *July* removed without Appeal, and a Rule was granted by the Court of King's Bench, to shew Cause why the Order should not be quashed.

The same Term.

The King *against* Giles, for an Assault.

MOVED to quash an Indictment on an Exception, that the Jury instead of being charged are discharged, for it set forth that *being sworn and discharged*, but there being another Indictment under the same Caption, on the same Parchment, over-ruled. But not being said *sworn*, etc. *then and there.* Shew Cause.

The same Term.

The King *against* Johnson and others.

A *Mandamus* was granted to the Defendants to take the Accounts of a Surveyor of the Highways, and to allow him a Rate for reimbursing him the Money he had been out of Pocket.

The same Term.

The King *against* The Inhabitants of St. Martin's Ludgate.

TWO Justices remove *E. L.* single Woman, from *Westminster* to *St. M. L.* as likely to become chargeable, for that her Father had rented a Tenement in the Rules of the *Fleet*, of *above ten Pounds a Year*, Rent, and that the Daughter now removed was born there; *this is a Settlement within the Statute* Car. 2. and Sessions quashed the Order of two Justices, and now the Order of Sessions quashed.

The same Term.

The King *against* Banghurst.

THE Defendant was committed by a Justice of Peace, being *charged* with getting a Woman with Child, which, when born, would be a Bastard; and now being brought up by *Habeas Corpus*, it was moved to discharge him; because by the Statute 18 *Eliz.* the Justices have no Authority to commit until the Child be born, for perhaps it may never be born, and the Father may keep it after it be born, and mentioned Cases at *Nisi Prius* brought against Justices and Church-Wardens, as the Case of *Wenman* and others; but *Page* and *Probyn* only Justices in Court, would not determine it upon the Exception. But the Commitment was discharged; because the Defendant was not said to be *charged upon Oath of the Woman*, and the Defendant was discharged.

The same Term.

The King *against* The Inhabitants of Utoxeter.

A RULE was made to shew Cause why a *Certiorari* should not be granted, to remove an Order made relating to the Poor's Rate, *with every thing concerning it, and also the Rate itself.* But it was objected by Mr, *Reeve*, that the *Certiorari* did not lie. *Salk.* 526. The King against the Inhabitants of *Audley*. *Salk.* 483. *Shoreditch, St. Leonara's*, The King against the Inhabitants of *Wincanton, Michaelmas*, 13 *George* 1. The King against *Eggleshall.* The King against the Inhabitants of *St. Mary Marlborough, Certiorari* to remove a Rate, and the Return filed *Hil.* 9 *Anne.*

The same Term.

The King *against* Utoxeter.

THE Question was, Whether a *Certiorari* should go to remove a Poor's Rate, the Orders being removed, and on shewing Cause, it was said, that no such *Certiorari* had been granted for twenty Years last, 2 *Salk.* 483. *Carth.* 464. The King against the Inhabitants of *St. Dorchester, Mich.* 7 *George* 1. The King against the Inhabitants of *Bridgewater, Hil.* 7 *George* 1. The King against the Inhabitants of *Barnstaple, Hil.* 3 *George* 2. The King against the Inhabitants of *Wincanton.* The Sessions are Judges of the Equality, and upon the Appeal it is never made a Record of the Sessions, and Notice is given to the Church-Wardens to produce the Rate, and after the Determination by the Sessions, the Rate is returned to the Officer.

The Same Term.

The King *against* Utoxeter.

MR. Serjeant *Birch* for the Rule. If it should appear not to be a legal Rate, it may be returned here though not filed, for after the Confirmation this Court has an Authority, and as to Poor's being starving, that is not the Case now, for Rates should be monthly. Mr. *Fazakerly:* The Rate which is confirmed is become Part of the Order, and ought to be returned; as to the Inconveniences, the Order is the same as if the whole was returned; for pending that, the Rate cannot be collected, and since there may be Error in this Part it ought to be looked into; for a Rate ought to be confirmed by two Justices (*Quorum unus*) which must appear; it is admitted there are two Instances where Rates have been removed hither by *Certiorari.* Suppose a Person rated for Stock upon his Land, which by Law he is not liable to, ought it not to be returned into this Court to see whether it is so or not? it was offered to be tried in a feigned Issue; for the Case is, that within the Parish of *U.* are three Vills, *U.* insists they are to maintain their own Poor. As to the giving back the Rate to the Officer, that is wrong, for on Appeal the Sessions ought to make it Part of the Record, and not to intrust the Officer with it; the Justices are barely Judges of the Fact. Suppose it appeared the Rate was made to reimburse former Overseers, cannot this Court quash it?

Mr. *Wyrly:* The general Reason for not removing a Rate is, that the Poor are starving, but that is not the Case; at the Sessions they entered into the Question between the Town and the Vills, and determined that the Vills jointly should maintain their Poor distinct, and for that Reason quashed the Rate, *Salk.* 483, 826.

Mr. Justice *Lee:* The Order is, that the Rate, as to these three Vills, should be quashed; because they are to maintain their own Poor: An Appeal from a Rate is improper, for it is the Person is aggrieved: The Matter for the Consideration of the Sessions is the Fact on the Assessment; they are not to meddle with the Form of it; and nothing they can do will help it as to Form; but the Assessment is only Evidence, and no Part of the Record, and that remains in the Hands of the Officers.

Mr. Justice *Page* thought the Rate itself ought to be returned into this Court, for the Judges to consider it; the Assessment is joint and cannot be distinguished.

Chief Justice: By the Order it does not appear what the Rate is, and it is not possible for this Court to judge whether it is right or wrong: I should think, when a *Certiorari* goes to return Orders with all Things touching the same, that every thing should be returned for us to judge on; I do not mean the Fact, for that we cannot do, but the Thing itself in Question. Then was cited the King against *Eggleshall, Mich.* 13 *George* 1. where the Examination was returned, that the Court might look into it, but the Chief Justice said, that was a bare Fact. The King against the Inhabitants of *St. Mary Marlborough, Hil.* 9. *Anne,* a Rate was returned and *Certiorari* filed; but it was said that was done without Enquiry, and before the Rule for Motions to be made in open Court, for all *Certioraries.*

Mr. Justice *Probyn:* The Rate may be void at first Sight, and if it be, how can the Court judge whether it be so or not, without the Rate itself be returned hither? The King against the Inhabitants of *Marlborough,* 9th of Queen *Anne,* upon Search, that Rule for a *Certiorari* was afterwards discharged; and Mr. Justice *Lee* said it was discharged upon the great Inconvenience that would attend such Removals, and not upon any Variance, and the Rule to shew Cause why a *Certiorari* should not be granted to remove the Rate was now discharged, and said it was objected in the Case of *Marlborough,* that it being a Corporation the Party could have no Benefit of the Appeal, the Justices being the same; but it was answered that Advantage might be had on the Distress.

Hilary, Ninth of Queen *Anne.*

Inhabitants of Horley *against* Charlton.

ORDER of Justices to remove a Woman from *H.* to *C.* and *C.* appeals, and Order of two Justices quashed by the Sessions, upon the Appeal, and the Case stated specially by the Sessions, that one made a Will 8th of *February* 1705, and gave to *H.* thirty Pounds for

putting out Charity Children, by the Consent and Choice of her Executors and the Church-Wardens of *H.* and that *A. B.* the Person removed was bound to *J. C.* of *C.* for six Years, as Apprentice, with the Money left, and that she lived six Months after the Binding at *C.* but that neither the Testatrix nor her Executors were Parties to the Binding; and the Sessions were of Opinion, that she got a Settlement by this Residence of six Months at *C.* The Statute 43 *Eliz.* describes how the Binding shall be, which is in the Nature of the Execution of a Power which is to be done strictly, 8 and 9 *W.* 3. *c.* 30. Persons to whom Apprentice is bound shall receive and provide for them according to the Indenture; it is not an Enlargement of 43 *Eliz.* but in this Respect that he shall be bound to receive and provide according to the Indenture. It would have been necessary to shew the Master did execute the Part of the Indenture, and if he did not, it is not a Binding to make that an Apprenticeship; and if it is to be taken at Common Law, the Church-Wardens and Overseers, with the Consent of two Justices, have put her out, and it amounts to no more than an Agreement or Covenant she should serve the Master, *Salk.* 479, that was held not a Settlement, but a bare Boarder; an Infant might bind himself. *Hil.* 3 *George* 1. *Newbury* against *St. Mary's Reading*, so as to make a Settlement, thought not to make him (3 and 4 *W.* and *M.*) liable to the Covenants in the Indenture. 43 *Eliz.* Man bound till twenty-four, and a Woman till twenty-one, or marrying, then the Binding ought to be according to the Direction of the Statute; but this is a general Binding, but here the Age of the Woman does not appear, and she might be above the Age of twenty-one, and then it is void by that Statute. 7 *Jac.* 1. *c.* 3. made about binding Apprentices in Towns not corporate, there the Vicar, etc. there Money is given for placing out Children; now this Woman was bound by special Money left by a particular Person, but here neither the Minister nor Constable were Parties to the Binding, and the Statute *Jac.* 1. exempts Cases out of 43 *Eliz.*

Mr. *Fazakerly:* The Charity appoints the Bindings shall be by Consent of her Executors and the Church-Wardens; but this does not appear upon the Order; then the 43 *Eliz.* Orders a Raising a Fund for putting out Apprentices with the Consent of two Justices (*Quorum unus*); that is not said here; then she is bound for six Years, and if those on this Binding extend beyond twenty-one, then it is void; and if the six Years coincide with the twenty-one, yet it is void; because if she married before, she ought to be discharged; by 7 *Jac.* 1. *c.* 3. the Minister of the Parish is to be a Party, but he is not a Party to the Binding, and as that Statute is not pursued, the Binding does not gain a Settlement, and it would be hard to bind her to live in a particular Place where she had no liking to live; no Apprentice without Deed, *Carth.* 94. A Town cannot put one Apprentice but those they provide for, this was not such a one; and if they should, the Statute 7 *Jac.* would be totally eluded; and it may be a Question, whether under the 5 *Eliz.* the Binding shall be but for seven Years.

Contra; Objection, this is not pursuant to the Will; because it does not appear it was with the Consent of the Church-Wardens, and her Executors, which was requisite, though she does not say they shall be Parties; but if this should be the Case, it amounts only to a Misapplication of the Trust Money, but the Binding shall be good, and it is not said they disapproved or were not consulted.

As to the Objection 7 *Jac. c.* 3. the Objection is, the Minister and Constable are not Parties, but there is an Exception in the Statute, of Money given otherwise by the Donor; but upon the Order the Statute seems to be pursued, the major Part named make it good, which is given by the Statute, for they are only two out of six; the Law takes Notice of a Consent as to a Settlement, but looked upon all Places, as to the Party, to be equal, whether settled in one Place or other, nor is their consent requisite.

The Order states, that *Martha Danvers* did not execute the Indenture, but that extends only to the Places where Custom has obtained for Infants to sign the Indenture as in *London.*

As to the Objection on the 43 *Eliz.* the Indenture mentions they were bound by two Justices (*Quorum unus*) and that the Age of *M. D.* appears, but the Order of Sessions has stated it differently as to a Marriage, the Indenture will be avoided by it, she is then under the Power of her Husband, and the Apprenticeship would be void. 1 *Jac.* 1. *c.* 25. Adjourned.

The same Term.

The King *against* Askman.

INDICTMENT by way of *quod cum* laid of a Rescous (being by Recital, *that whereas* was therefore quashed.)

The same Term.

The King *against* Wing.

INFORMATION granted against the Defendant, Mayor of *Wallingford*, for Extortion, in taking fourteen Shillings for four Warrants to impress two Teams to carry Soldiers Baggage. No Fee allowed by the Act to prevent Mutiny and Desertion. Mr. Justice *Page* said, that only six Pence was due for a general Warrant, and twelve Pence for a special Warrant; he put the Constable in a way of reimbursing himself, bidding him put it in his Rate, and he would allow it; this was put in the Constable's Rate, and taxed on the County.

The same Term.

The King *against* Morris.

MOVED for a *Certiorari* to remove an Indictment from the Grand Sessions in *Wales*, for a Nusance in erecting a Ware, and cited *Popham* 144, and that such *Certiorari* had been granted to Counties Palatine. 1 *Salk.* 48.

The same Term.

The King *against* Orm.

THE Collectors of *Ashby de la Zouch* in *Leicestershire*, pretended they had a Right to collect Money due for the Land Tax more than was assessed, because it had been a Custom in that Town for twenty Years, to collect Money more than in the Duplicate, and divide the Surplus among themselves, *Salk*, 382. though insisted the Land-Tax Act had given Remedy before the Commissioners, and that an Indictment would quiet the Country as well; but it was said, that the Chief Baron at the Assizes had recommended an Information, and Rule for Information made absolute.

The same Term.

The King *against* The Inhabitants of Newton.

ON showing Cause why an Order of Removal of two Justices should not be quashed, for removing a Certificate Man, which Certificate was not said to be allowed by two Justices; it was insisted, that the Justices have adjudged *N.* to be their last legal Settlement, which was sufficient, and that the Certificate shall be presumed a good one, as in the Case of Wages intended in Husbandry.

It was answered in the Case of *Horncastle* against *Boston*, *Easter* 4 *G.* 1. where two Justices were Witnesses to a Certificate, and the Court held it no good Certificate, for Justices ought to allow, and being only Witnesses was not a Mark of their Approbation.

Mr. Justice *Probyn:* The Order is good, for it sets out that the Pauper came by Certificate, and adjudge he was actually chargeable, and that *Newton* was the Place of his last legal Settlement, they having gained no Settlement elsewhere since; which sets out the whole Reason of their Judgment, and would make the Settlement good if there had been no Certificate; therefore the Order of Removal must be confirmed.

Easter, Fifth of King *George* the Second.

The King *against* The Inhabitants of the Borough of Wallingford.

MR. *Taylor* moved to quash a Writ of *Mandamus* directed to the Justices to sign a Rate made for reimbursing the Surveyor of the Highways, for extraordinary Charges, etc. this Power of the Surveyor of the Highways arises from the 3 and 4 *W.* and the Writ is too general; this arises upon the particular Statute; the Power of the Justices is circumscribed.

But by the Court, you may return the Writ, we do not supersede a Writ because erroneous, unless you show some palpable Fault upon the Face of it; and Mr. Justice *Lee* said, he remembered it denied in the Case of the Insurance Company.

Take nothing by your Motion.

Easter, Fifth of *George* the Second.

The King *against* The Inhabitants of Utoxeter.

MR. Serjeant *Birch* took Exceptions to the Order of Sessons, made at *Stafford*, that three Vills should pay the Poor within those Vills, and that *Utoxeter* should pay its own Poor within the Parish, exclusive of those Vills.

First Exception, That *Stafford* is not a County within the Meaning of 13 and 14 *Car.* 2. which extends only to the northern Counties, and cited 2 *Lev.* 142. 3 *Keb.* 422, 539.

Second Exception, That the Order is too general, for it ought to say, that this Parish is so large that it can come within the Benefit of the 43 *Eliz.*

Third Exception, That the Appeal of the three Vills is joint, which ought to have been separate, and the Vills in this Respect to be considered as Parishes.

Fourth Exception, The Order that these Vills should maintain their own Poor is also wrong, being joint, for by the Statute every Vill must maintain their own Poor, and cited *Salk.* 480. where it is held, that the Sessions cannot annex one Parish to another.

Mr. *Wyrly:* This being an Appeal from a Rate, the Sessions had no Power to consider any thing else, and could not bring this Matter in Question, for the Equality, or Inequality of the Rate was what was before them, and they could not settle the Bounds of those Vills.

To which it was replied, that it was determined in *Dolting* and *Stoke-Lane*, *Salk*, 486. in the Margin, that the Statute 13 and 14 *Car.* 2. extends to all Counties.

Mr. *Reeve* said, by 43 *Eliz.* Justices gave a Jurisdiction on Appeal for Poor's Rate, and here the Appeal is by the Inhabitants of the three Vills, and the Sessions quash the Rate as to these three Vills; as to that ordering Part, that they should maintain their own Poor separately from *Utoxeter*, it was a Matter not before them, for only the three Vills appealed.

As to *Stillington* and *Norton*, that has been determined otherwise since, in *Dolting* and *Stoke-Lane*, *Hil.* 11. *Anne*, where it was resolved that the Statute *Car.* 2. would extend to other Counties than those named in the Statute, as to *Brucum-Lodge*, it did not appear that there was more than one House, and as to a single House the Court was of Opinion, that Justices could not appoint Officers; which was the Reason they did not determine the Settlement.

Mr. *Abney* on the same Side insisted on the Case of the Queen against the Inhabitants of *Dolting*, *Stoke-Lane* and *Brucum-Lodge;* and so was the King against the Inhabitants of *Rufford*, where a *Mandamus* was granted to appoint Overseers.

As to Exception that the Order is too general, it is sufficient.

As to third, That Appeal being joint is wrong, though every Man may have a separate Rate, yet they may join; because the Words of 43 *Eliz.* are *Party and Parties aggrieved.*

Mr. Serjeant *Birch*, in Support of Exception, the Case of *Dolting* stands alone, and nothing determin'd as to Parishes. As to the second Exception, it ought to appear they are right.

In a common Order of Removal it is necessary to shew it was upon Complaint that the Justices *Quorum unus*, that the Party was likely to become chargeable and removeable, and must adjudge the Place of his last legal Settlement; in the present Case the Largeness of the Parish is the only Point of Jurisdiction.

As to their Paying separately from *Utoxeter*, it ought to have been shewn, that those Vills had Overseers, a Case in *Salk.* that Justices cannot annex and consolidate Parishes.

Mr. *Fazakerly:* It is now contended, that the Statute *Car.* 2. extends to all Parishes in *England*, which if it should prevail would make great Confusion, and alter the present Method by dividing every Parish that has Vills; that the Statute is not general appears by the Words, *many other Counties;* the Case of *Dolting*, etc. are no Authorities; because the

present Case relates to Vills within Parishes, and the other are that the Statute extends to Places that are not within Parishes.

They had no Jurisdiction to make this Rate jointly, and that was not a Matter proper for an Appeal, but should have stood a Distress; Officers of one Parish might as well have rated the next, for Inequality, etc. are proper only for Justices Inquiry, and they ought not to quash Orders where the Parties had no Right of Appeal.

Order only says, for such Vills Overseers were duly appointed, but does not say how long, perhaps but a few Days before.

Mr. *Wyrly:* As at Common Law no Provision was for the Poor, so all the Statutes made for that Purpose are taken as penal, and as laying a new Tax or Burthen on the Estates, and upon that Consideration was the Resolution in *Stillington* and *Norton;* so the Exception that the Statute *Car.* 2. does not extend to the County of *Stafford*, goes on this Reason, That inferior Jurisdictions ought to set out their Power; neither can they determine a Right which will affect the Parishes for ever, as that of the Boundaries.

Chief Justice: It is a Case of considerable Consequence, and we must have Copies of the Orders; the Reason of *Mandamus's* to appoint Overseers in Extraparochial Places was, that the Poor in such Places should not starve: If a Parish is such a one, as by Reason of the Largeness the Poor cannot be so conveniently maintained, then it comes within the Intent of the Statute, and whether this point ought not to be set out.

Mr. Justice *Page:* Where Vills are thus separated, it might bring ten Shillings in the Pound on one Vill, that happened to have most poor; it seems to put too great a Power in Justices. Adjourned.

The same Term.

The King *against* The Inhabitants of Welsborn and Walton.

MOVED for an Information against the Inhabitants of these Parishes, for not repairing their Highways, upon an Affidavit that the road was extreamly ruinous, and that they had applied to the Grand Jury at the Assizes, but could not get the Bill found, and said in the Case of the King and the Parish of *Loughborough* in *Leicestershire*, about seven Years ago, Information was granted. Shew Cause.

The same Term.

The King *against* Bowden.

MR. *Pilsworth* moved to quash an Order made for the Payment of small Tithes according to the Act of 7 and 8 *W.* 3. *c.* 6. which had been substracted.

The Exception taken was, that it did not appear by the Order, that the Tithes had been demanded, and that twenty Days were elapsed without paying of them; and until that, the Justices by the Act have no Jurisdiction.

Mr. *Reeve*, to shew Cause why the Order should not be quashed said, That by the Act of *W.* an Appeal lies to the Sessions, and no *Certiorari* shall go.

Mr. *Pilsworth* to that said, That the Act takes Notice of the *Rights* coming in Question; that he had an Affidavit, whereby it appears, that the Right of the Land is in Question, but that could not appear on the Orders, nor was it necessary, so that an Affidavit is the only Method we have to make this appear to the Court.

Mr. *Reeve* said further, That the Court could not intend there was no Demand.

Mr. *Pilsworth;* That must be expressly adjudged, which is not done.

Justices *Page* and *Probyn* absent.

Chief Justice and Mr. Justice *Lee* said, that this being a limited Jurisdiction it should appear to be pursued, and thought the Order bad in that particular. Order quashed.

The same Term.

The King *against* The Inhabitants of North Featherton.

THAT on such a Day two Justices made an Order, by which they removed a Man, his Wife and four Children, naming them, and adjudge their Settlement; no Appeal to the next Sessions, and that Order is affirmed.

Afterwards two Justices make an Order, whereby they remove the Woman by her Maiden Name, and the four Children as Bastards. Appeal to the Sessions, the Sessions upon hearing the Matter stated it specially, and amongst others state, *that this Woman and the four Children were the same* with the Woman and Children removed by the first Order confirm'd as aforesaid, and delivered it as their Opinion, That the first Order being confirmed was conclusive, and thereupon quashed the said Order of two Justices; and Mr. *Fortescue*, the first Order of two Justices being confirmed is conclusive, and therefore the second Order of two Justices is totally irregular, and the Sessions did right in quashing the second Order of two Justices; the first Order confirmed was conclusive, and prayed that the last Order of Sessions might be affirmed, as well as the first Order of Sessions confirming the first Order of two Justices.

Mr. *Reeve* agreed to the general Rule laid down, but said this Case was quite different; it appears plainly, by the Order of Sessions, that the Merits of the Case is with the Parish of *Featherton*, for the Children are Bastards born at *Horsington*, and there the Mother was likewise settled: The first Order of two Justices is for removing the Man and his Wife and their four Children, this Order is confirmed: By the second Order of two Justices *Mary Holker* and her four Bastard Children are removed; therefore at first Sight they are not the same: But indeed the last Order of Sessions does find them the same Persons; the last Order of Sessions states, That this Woman was not the Wife of the Husband, for he, though married, was married before to another Person, and of Consequence the second Marriage totally void; they are removed by wrong Names or Descriptions, and suppose the Case of a Mistake in the Christian Name of the Party removed, shall that be conclusive? he said it was a new Case, and submitted it to the Court.

Chief Justice thought they had slipt their Opportunity, and that the first order confirmed is conclusive.

Mr. Justice *Page* agreed.

Mr. Justice *Probyn:* 'Tis conclusive, that is the Time prescribed by Law, and not appealing, that Order is confirm'd, and is conclusive.

Exception to the first Order of two Justices, That the Age of the Children did not appear; *Answ.* That it was adjudg'd to be the Place of their legal Settlement, which is sufficient.

Mr. *Reeve:* It does not appear what Officers made the Complaint, all the Officers of both Parishes are named, *viz.* Upon Complaint by the said Officers.

Chief Justice: We will suppose all the Officers made Complaint.

The Court affirmed the last Order of Sessions, and the first Order of two Justices.

The same Term.

The King *against* Holland.

ORDER of Bastardy made by the Justices of *Worcester*.

Mr. *Parker* took two Exceptions, one to the Caption, *viz. Worcestershire*, to wit, At the General Quarter-Sessions of the Peace held at *Worcester* for the County aforesaid; the Exception to this was, That it did not appear the Sessions were held within the County. The second Exception, That it did not appear that the Defendant appeared, or was heard before the Justices, and said that the Court did not intend anything.

Mr. *Reeve* on the other side said, That as to the first Exception, there was nothing at all in it; that every one knew, and the Court would take Notice that in several Counties the Sessions are actually held within Cities, which are Counties of themselves, and that by Act of Parliament; and such is the Case of *Worcester* for the County Justices to hold their Sessions there; as to the other Exception, he said, that had been formerly allowed; but in the late Cases it has been held otherwise, *Easter* 11 *Anne*, *Queen* and *Cripps*, and *Mich.* 4 *George* 1. *King* and *Blackwell*, in both which Cases this Exception was taken and over-ruled. The Court confirmed the Order.

Mr. Justice *Page:* If Summons necessary, the Appearance of the Party does not cure the want of it, and so held in Serjeant *Whitacre's* Case.

The same Term.

The King *against* the Inhabitants of South Cerney.

ORDER of two Justices for removing a poor Person from South *Cerney* to *Coltsbourn* in *Gloucestershire;* on Appeal the Sessions discharge that Order, and state the Case specially.

That at *North Leach* are annually held two Mops or Meetings for the hiring of Servants, the one on the *Wednesday* before *Michaelmas*, the other on the *Wednesday* after; that the Pauper was hired the *Wednesday* after *Michaelmas*, to the Parish of *Coltsbourn, to serve to the Michaelmas* following, which he did accordingly, and received his Wages.

Mr. *Stevens* moved to set aside the Order of Sessions, because upon the Case specially stated, a sufficient Settlement appeared, the Person being hired according to the Course and Custom of the Country, at the usual Times for hiring Servants for the Year following; said he only contended for it on the Custom of the Country; but it was ruled by the Court, that *this is no Settlement upon the Face of it, there must be a Hiring for a Year, and that cannot be dispensed with*, and refused even a Rule to shew Cause.

Michaelmas, Sixth of *George* the Second.

The King *against* The Commissioners of Sewers in Nottinghamshire.

EXCEPTIONS were taken to several Orders of the Commissioners of Sewers.

First was, That it did not appear that three of the Commissioners were of the *Quorum*, which by the Statute 23 *H.* 8. they ought to be.

Secondly, That it does not appear that the Place upon which the Orders were made were within their Jurisdiction.

Another Exception was likewise taken to the last of the Orders: That the Commissioners had made an Order, that all Constables should pay two Shillings to their Clerks for a Copy of every Order; that though the Act allows them to make a reasonable Allowance to their Clerks, yet they would not make such an Order on the Constables but in the Towns; and a Rule was made to shew Cause, which was afterwards made absolute.

The same Term.

The King *against* Roberts.

CONVICTION upon two Acts made in Queen *Anne's* Reign, to prevent Spreading of Fire; to make Party-Walls; Penalty on the Proprietor, and also on the Builder, of *fifty Pounds each.*

Exception; Justices have not set forth sufficient Authority to ground their Conviction upon; Justices of Peace of the County of *Middlesex* have not all of them a Jurisdiction, for the Offence is confined to the Bills of Mortality.

Second Exception; The Statute excepts *London Bridge.*

These are summary Convictions, the Court will not assist, it does not appear that these are Party-Walls intended by the Act, there may be Party-Walls in the midst of the Houses severally, and not between House and House, and then not within the Act.

Third Exception; That it is set out that all the Party-Walls were not totally built of Brick. 7 *Anne* excepts Door-Cases, etc., and then it is not totally, which may answer the Act.

Chief Justice: I do not think the Door-Cases any Part of the Wall.

By the Court all the Exceptions over-ruled, and Conviction confirmed.

Michaelmas, Sixth of *George* the Second.

The King *against* Hall.

AN Information was moved for against *Hall* for a very gross Perjury which appeared upon the Certificate of Judge *Page.* Shew Cause.

The same Term.

The King *against* Church-Wardens of Brackley, St. Peter's.

THE Sessions made an Order upon former Overseers, to pay Money to subsequent Church-Wardens in the first Instance.

Objected, that Sessions cannot proceed in any Case in the first Instance, where an Appeal is given by Statute, but only where Power is given to the Justices and no Appeal; and so held *Salk.* 471, and a Rule was made to shew Cause.

The same Term.

The King *against* Killingsworth.

INDICTMENT for speaking Words against a Justice of the Peace; Judgment by Default; Error brought.

First Exception; The Words *then* and *there* omitted in the Indictment.

Second; Judgment in *English.*

Third; 'Twas that he should stand committed to the County Gaol without mentioning any Time.

Nobody of the other side; Judgment reversed.

Note; Defendant was committed on the Judgment by Default.

The same Term.

The King *against* Longhouton.

INDICTMENT against the Inhabitants of a Vill for not repairing their Highways; Demurrer to the Indictment.

Exception to the Caption of the Indictment, the Words *then and there* omitted; King and *Morice, Trin.* 4 *George* 2. the same Exception allowed, and in the King and *Killingworth* this was held fatal, and Indictment quashed.

There was another Exception intended, that the Vill was indicted generally without shewing that by Custom or Prescription they were liable, and of common Right a Vill is not liable; this Exception was allowed in the Case of the King and Inhabitants of *Talk-Stafford,* taken by Mr. *Parker* this Term. Indictment quashed.

The same Term.

The King *against* The Inhabitants of Eccleston.

A RULE had been made to shew Cause why a *Certiorari* should not go to remove a Rate made upon the Parish of *Eccleston,* to contribute towards the Repairs of the Roads of the Vill of *Slindon,* within that Parish.

Mr. *Lacey* to shew Cause said, That this Order was founded on the 3 and 4 *W.* by which it is expressly directed, that no *Certiorari* should lie.

Mr. *Parker* on the other side said it was founded on the 7 and 8 *W.* which is silent in this Matter, and said where a subsequent Law was made, and an Act done in Pursuance of it, that a former Law would not influence it, and mentioned the Case of a popular Action on the Statute *Jac.* which does not affect any Method of proceeding in any popular Action grounded on a latter Act, but desired the Rule might be enlarged for a Day or two to look into it.

The same Term.

The King *against* Hatchley Tradgely and others.

MR. *Fazakerly* moved for a *Certiorari* to remove an Indictment found at *Salop* Assizes, for stopping a Water-course, and said the Reason was why they desired to remove it, because the Defendant would be under a Necessity to have a View in Order to make his Defence, and that without Consent of the Prosecutors they could not have a View on any Indictment found at the Assizes; but when the Indictment was in this Court they should then be intitled on the Act of Parliament in Course.

The Court said that it did not appear but that the Prosecutor would consent, and that he should have had an Affidavit of an Application to the Prosecutor for a View; however granted a Rule to shew Cause.

The same Term.

The King *against* Beresford.

MR. *Abney* moved for an Information against the Defendant, for breaking open the Door of an Out-house, and untying a Greyhound belonging to *A. B.* and hanging him.

The Court seemed to think that it was Felony for breaking open the Door and hanging a Dog kept for Game.

But by Mr. *Abney*, in *Brook* and *Lambert*, it is held that a Greyhound is of a Base Nature, and that Breaking and Entering the Out-house was but a Trespass.

By the Court: Shew Cause, and by Mr. Justice *Page:* If they shew Cause that this is Felony, let them.

Hilary, Sixth of *George* the Second.

Lateward *against* Doltson.

MR. *Parker* moved for a Prohibition, on a Suggestion that all Customs are tryable at Common Law, to stay a Suit in the Arches, where the Plaintiff had libell'd to compel the Payment of a Church-Rate of *Allhallows-barking*, made pursuant to a Taxation on the Inhabitants, by a Pound Rate, according to the annual Value of their Houses; whereas Time immemorial it has been Customary to tax according to the Personal Estates; that Defendant had pleaded this Plea below and made Affidavit of it here.

By the Court: Shew Cause.

The same Term.

The King *against* Clerk and another.

THE Defendants were indicted (as Tradesmen elected to be Scavengers, and Election confirmed by two Justices of the Peace) for not obeying an Order made by two Justices, requiring them to pay over the Sum of seventy-two Pounds, which was in their Hands as Scavengers, to their Successors.

Mr. *Fazakerly* moved to quash it, because the Justices have no such Power, by the Statute 2 *W.* and *M. c.* 8. §. 11. for that Statute gives Justices Power to commit for not accounting; but not to order the Money to be paid over; but the succeeding Scavenger ought to bring an Action on the Statute for the Money remaining in the Predecessor's Hands.

Mr. Justice *Page:* This is a Matter of great Consequence to the Publick, great Sums are raised and the Business very indifferently done; I do not know but Justices have a Power to Order the Payment of the Money over; it is certain they have Jurisdiction to make them account, and it would be odd if they should not have Power to make them comply so far with the Design of this Act; at this Rate it would be difficult to get the Money out of the Hands of the Scavengers that had a mind to keep it in their own Hands; he said that Defendants might demur if they would, and would not consent to quash it.

The same Term.

The King *against* Langley.

MR. *Abney* moved to quash an Indictment found at *Northampton*, on 5 *Eliz.* for exercising a Trade of a Roper at *East Hadden*, which is a Country Vill, and the Statute does not extend to Trades exercised in Country Vills or Towns, but only to Market Towns, 1 *Ventr.* 51. 1 *Mod.* 26. Mr. Justice *Page* said, That this Exception had often been allowed in his Time, and he did not know it was a Trade within the Statute. Shew Cause.

2 *Keb.* 583. 3 *Keb.* 782, 790. Rule made absolute to quash the Indictment.

The same Term.

The King *against* Commissioners and Trustees of Kingston Turnpike.

SIR *John Strange* moved to quash an Order of Sessions made at the Quarter-Sessions for *Surry*, commanding the Sheriff of that County to remove a Turnpike; the Order was made at a Sessions held the eleventh *July* last, and recites; *Whereas* Complaint was made to them that the Commissioners and Trustees had exceeded their Power in erecting a Turnpike, etc. *And Whereas W. C.* had given Notice to the said Commissioners and Trustees that he intended to make a Complaint to the Sessions, etc. *And Whereas* neither the said Commissioners, Trustees, nor any one on their Behalf, had attended the Sessions to defend themselves, etc. now upon examining Witnesses upon Oath, they adjudge the said Complaint to be true, and order the Sheriff to remove the Turnpike, etc. and his Objection was, That it did in no sort appear that the Commissioners, etc. had any due Notice given; for the Notice, if any, might be of that Day, and then this Order was made, *ex parte* meerly, he said he admitted that by the late Act made against the destroying of Turnpikes, there was an Authority given to the Justices in Quarter-Sessions to order the taking down any Turnpikes unduly erected, after hearing and determining the same in a summary way; but the Commissioners ought to have had Notice.

Chief Justice: Before this Act the Justices had no Jurisdiction, for a Turnpike erected without Authority was a meer Nusance, of which they had no Jurisdiction; but this Act gives them a particular Jurisdiction in this Case. Mr. Serjeant *Wright* shewed Cause.

Sir *John Strange*, to quash the Orders of Sessions; this made too hastily; a Complaint is usually made, a Copy is usually given, and Defence may be made next Sessions: The Order is made 16 *July*, and none appearing on the Behalf of the Trustees, order it to be removed; Excess of Power; not said in what that Excess of Power did consist, for that the Trustees have Authority in many Instances, and therefore too general, and could not make a Defence on the very Day, and Notice and reasonable Notice is all the same thing.

Mr. *Fazakerly:* Before Complaint no Jurisdiction arises, and because he did not appear they order, he having Notice, but he ought to be summoned; indeed if it does appear he makes Defence, that alters the Case; but that Warrant or Summons ought to be made after Complaint is made, for before Complaint is made no Power attaches; nay Sessions on an Appeal could not proceed, unless the Appellant had given Notice of the Appeal; the Turnpike is said to be in the Town in the Order, but it is not said to be in the Highway, and then this Court cannot intend the Sessions has any Jurisdiction under the Statute; it may be a private Close, etc.

It does not appear to be erected in their Jurisdiction, for the Power is where the Turnpike is erected.

Mr. Serjeant *Wright:* It is to be presumed there was a Summons, as the contrary does not appear; the Queen against *Cosins*, in an Order of Bastardy, *Trin.* 13 *Anne*, the Court then said, as it was a remedial Law and not a penal Law, the Court would not suppose they had done wrong so as to vacate the Order; the same holds as to the Objection of want of Notice, for it appears there was Notice of an intended Complaint, and that is Notice of a Complaint; Notice of an intended Motion is a Notice of a Motion, and thereon this Court will stay Proceedings. If Partiality does not appear, or other Ingredient of Passion, a Proceeding cannot be too summary, where one or more are impowered to act in a summary way; and to suppose a Judge has not acted fairly, is to suppose he has acted criminally, and for ought appears, this may have given the Party Time; Commission of Gaol-Delivery is summary, and all at the same Time.

The Excess is said to be in continuing two Gates, which is expressly agreeable to the Statute, and it could not be set out more conveniently.

Objection; Not sufficient to follow the Words of the Statute, but this may be a Turnpike set up elsewhere out of their Jurisdiction. Answer; This appears to be set up at *Kingston*, which is within the Jurisdiction of the Justices.

Contra; No Notice can be given but in a judicial Proceeding, and that cannot be till the

Jurisdiction attaches, and here it appears they made the Order on the Foot of that Complaint: Where an Order is made behind a Man's Back, it is too summary although a Jurisdiction is given, and what is contrary to natural Justice ought never to get footing in any Court of Sessions. It does not appear by the Order to be a Nusance; and if this was erected in a Man's private Close, every Word of this Order would be true; and if a Man does set up a Gate in his own Ground, to take Money of People that go that way, he may take it safely, and the Justices have nothing to do in it; and the Word *Turnpike* has nothing in the Import of the Word to shew that it is placed in a publick Road. A Remedy cannot be had against the Sessions, either by Action or Information, and if they have not made a Summons, the Party is without Redress, and the Court will not presume more than in the Order is specified; the Notoriety of the Fact is said to be sufficient to justify this Order; in elder Times Attainders have been made on the Notoriety of the Fact, but cooler Times rejected that. At a Gaol-Delivery, if an Indictment be filed, the Prosecutor cannot go on till the Defendant is brought in by Process, and suppose he was present, has not he a Right to traverse till the next Assizes? this Court has a Power to proceed in a summary way, upon Complaint made of the Corruption of Bailiffs; in the Case of Mr. *Budgel* the Court would not proceed against the Bailiff till Notice was given him, and till he had Copies of the Affidavits, and a Day given to shew Cause; if the Party appears, and is willing to make his Defence, that waves any Objection to the Shortness of the Time of Proceeding; but if he does not appear, or if he appears, and insists upon further Time to make his Defence, and the Justices will not give him Time, this Court will punish him; the Queen against *Simpson*, argued whether if summoned and does not appear; it was doubted much whether he could be convicted behind his Back, though at last the Court said it was his own Laches, and at last held good; Summons there set out where Judgment is final, upon an Order, that is a Conviction and there being no Appeal given, this is a Conviction and Judgment.

Mr. Justice *Lee: Quære*, If in an Order of Sessions any Summons is set out.

Mr. Justice *Probyn:* Notice of Appeal, if it be given, is sufficient; the saying Notice is given, is saying sufficient Notice is given; before he makes his Complaint he gives Notice to the Party that he will complain, which is affording the Party an Opportunity sufficient to appear and make his Defence; the Power of the Trustees is circumscribed to the Words mentioned in the Act of Parliament. But the Power of the Justices at Sessions is general through the County of *Surry*. Order is good.

Mr. Justice *Lee:* This is a good Order, I do not think this is a Proceeding too precipitate: Whereas a Complaint was made, after Notice given, of an intended Complaint; no Case is cited to shew that it would be necessary in an Order to set out Notice given; and as it appears Notice was given before the Sessions was held, the Party had an Opportunity to appear and make Defence; and the Order has pursued the Words of the Statute, and it is averred in the Order, that the Turnpike was erected where the Trustees had no Power to set it. Order stands.

The same Term.

The King *against* Amis.

SIR *John Strange* moved to quash an Order of Sessions for discharging an Apprentice upon this Exception, That the Trade of the Master was not a Trade within the Act of *Elizabeth*, and said that it was determined in the Case of the King and *Gately* in *Salk.* that the Power of the Justices extended only to such Trades as are within the Statute; and a Rule was made to shew Cause.

Mr. *Fortescue* shewed Cause against quashing the Order; The Order set forth that *William Stanmore* was put Apprentice to the Defendant to be instructed in the Trade of a Carpenter. The Order was originally made at the Sessions, and setting forth ill Usage discharged him, and ordered the Defendant to return Part of the Money.

As to the Exception, That it does not appear that the Defendant appeared or made Defence, it appears that Counsel were heard and Evidence examined, which shews a Defence made, and it was not necessary that the Master should appear, this being before the Sessions,

and not before a single Justice only. 1 *Salk.* 67. 2 *Salk.* 490. As to the second Exception, That the Court of Sessions have no Power to order a Return of Money; the Cases cited are express in Point that they have this Power.

As to the Exception, That it does not appear that the Master had any Money with the Apprentice, and therefore ought not to be ordered to return it; the Order is, that the Master should return and pay back so much Money, which could not be unless he had received it.

As to the Case of a Carpenter not being a Trade within the Statute, *Gately's* Case, 2 *Salk.* 471. 1 *Saunders* 313. 2 *Keb.* 822. *Watkins's* Case, 5 *Eliz.* §. 2, 27, 30.

Sir *John Strange:* As to the Defendant not being heard, the Counsel and Evidence might be only on one Side; it is necessary that the Master should be heard, though not necessary to set it forth in the Order; upon the Appearance of the Master the Court may discharge; in the Cases cited it appears, that the Masters were bound over.

As to ordering him to restore the Money, this Power only extends to Apprentices bound out by Justices, which does not appear to be this Case.

This Court will not take any thing by Inference or Intendment in the Case of an inferior Jurisdiction.

As to this not being a Trade within the Statute, the King against *Wheatly*, 12 *Geo.* 1. Order quashed on this Exception. 5 *Eliz.* §. 30. founds this Jurisdiction; he admits the Foundation of this Objection to be overturned by the Words of the Statute, and he waived the Objection as to the Trade not being a Trade within the Statute.

Mr. Justice *Page:* As to not hearing the Master, there is no Occasion to set out that he was heard; Summons is equal to Appearance; there must be a Summons, but it need not be set forth. It necessarily follows, that though the Master had the Money; the Power is not confined to Parish Children.

Mr. Justice *Probyn:* The Justices may order Restitution as incident to the Power of discharging,

As to the Notice, this is an original Proceeding at the Sessions; if it is an original Application to the Justices and then gone to the Sessions, the Parties must have taken Notice. The Distinction between Orders and Convictions is, that in Conviction it is necessary to be set forth, but not in Orders.

Mr. Justice *Lee:* Notice is of the Essence of Justice, and therefore it is to be presumed that the Authority is well executed, unless the contrary appears. The Court will consider.

The same Term.

The King *against* The Inhabitants of St. Giles in the Fields.

STATE of the Case. Two Justices removed *Jacob Maile* aged about nine Years, Son of *John Maile* deceased, by *Anne* his Wife, from St *Giles's* to St. *Clement Danes;* that Parish appeals to the *Middlesex* Sessions, who made the following Order.

Upon hearing of the Appeal of the Church-Wardens and Overseers of the Poor of the Parish of *St. Clement Danes*, in this County, against an Order of Removal, etc. and upon hearing what was alleged by Counsel, etc. it appears to this Court, that the said *Jacob Maile* is the Son of the said *John Maile* by the said *Anne* his Wife, that the said *Anne* before her Marriage with the said *John Maile*, and whilst she was a single Woman, became a Servant hired by the Year at four Pounds *per Annum* Wages, to one *Jacob Yellowby*, an Inhabitant in the said Parish of *St. Clement Danes;* and had under such Hiring lived with him in the same Parish for the Space of two Years, and thereby obtained a legal Settlement in the same Parish, which was the Place of her last legal Settlement, before her Marriage with the said *John Maile*; that the Place of the Nativity of the said *John Maile*, Father of the said *Jacob Maile*, cannot be found, and it doth not appear that the said *John Maile* gained any legal Settlement since his Birth, nor that the said *Anne*, since the Time of his Death, gained any Settlement until the Time of her Marriage with *Matthew Sincock* her present Husband, which was above two Years since, whose Settlement is in the Parish of *St. Martin in the Fields* in this County, which Parish the Counsel for the said Appellants doth insist to be the Place of the present legal Settlement of her the said *Anne*, by Virtue of her said Marriage

with the said *M. S.* and also of the said *Jacob Maile* her Son, in Right of his said Mother, and that he hath not any legal Settlement in the said Parish of *St. Clement Danes;* and upon hearing what was further alleged by the Counsel for the Inhabitants of the Parish of *St. Giles in the Fields*, who insisted that the said Parish of *St. Clement Danes* ought to be deemed the Place of the legal Settlement of the said *Jacob Maile*, in Regard his said Mother's former Settlement, as aforesaid, was in the said Parish.

This Court, upon Consideration had of the Premisses, is of Opinion that the said Parish of *St. Martin in the Fields* ought to be deemed the Place of the legal Settlement of the said *Jacob Maile*, as being the Place of the Present legal Settlement of his said Mother, by Virtue of her said Marriage with the said *M. S.* and doth thereupon allow of the said Appeal, and doth vacate and discharge the aforesaid Order of the said two Justices of the Peace, and the same is hereby vacated and discharged accordingly; and order him to be removed from *St. Clement's* to *St. Giles's*, who are required to receive and to provide for him, etc. until they can free themselves from the Charge thereof by due Course of Law.

Serjeant *Corbet*, to shew Cause, cited *St. George* and *St. Catherine's*, *Mich.* 1714, *Paulersberry* and *Wooden*. The Woman has gained a new Settlement, this is the present Settlement. In the Case of *Cumner* and *Milton*, it was not a Point settled, only said by Mr. Justice *Powel*, a Man must take a Wife with the Incumbrances.

Serjeant *Baynes* agreed, where a Woman had a Settlement in her own Right, Child should go to her last Settlement; this *Jacob Maile* was Son to *John Maile* and *Elizabeth* his Wife, who after his Death married again to one of *St. Martin's;* the Cases cited are, Where the Children removed with the Mother as Head of the Family; but this *Jacob Maile* was never in *St. Martin's*, and in *Cumner* and *Milton* what Mr. Justice *Powel* said, I suppose was assented to, because Court said nothing to the contrary, and cited *Salk.* 482.

Serjeant *Corbet* replied, The Children must be taken to be Part of the Family, and the Mother having gained a Settlement by her Marriage, the Children must follow it.

Special State, That *Anne*, Wife of *John Maile* was, before her Marrriage, settled as a hired Servant in *St. Clement Danes*, and Place of *John Maile's* Settlement unknown. Sessions discharge the Order of two Justices removing to *St. Clement's*, and adjudge it in *St. Martin's*, where her second Husband lived and was settled.

Mr. Justice *Probyn* could not be satisfied that they could send the Child to any Place, as to the Settlement of the Mother, but the Settlement she had at the Time of making the Order.

Mr. Justice *Lee:* The sole Question is, Whether this *Jacob Maile*, on the Marriage of his Mother into *St. Martin's*, can be settled there; I think it has been determined in *Carth.* that the Settlement the Woman gained by the second Marriage shall not be extended further than to herself.

Mr. Justice *Page:* I never apprehended, on such Marriage, that second Husband was obliged to maintain the Children of the first; nor shall he draw them to his Settlement.

Mr. Justice *Lee:* The Child is now to be sent to the Place of its own legal Settlement, unless he could gain it anew by the Second Marriage.

By the Court: Move it again before the End of the Term.

The same Term.

The King *against* Pinkney.

MR. Serjeant *Draper*, in Support of an Indictment for selling Corn by false Measure, which was quashed *nisi*, said, That this was an Offence indictable; first it is a false Token; but that the Court denied; then he said it was a Cheat, which was an Offence indictable, and that the Court would not quash an Indictment for a Cheat, but leave them to demur; he said this was an Offence at Common Law, and though 22 and 23 *Car.* 2. directs a particular Punishment, it is an Offence at Common Law; he cited *Syd.* 409, King against *Burgoin.*

That an Indictment for a Cheat not quashed, *Mod. Cases* 42.

As to the Objection, very deficient, he said it would do well enough, because the least want of Measure was a Cheat.

Mr. *Parker* in Answer said, The Court had quashed Indictments of this Sort; Queen against *Jones*. King against *Wood*, 5 *Mod.* 18. a faulty Indictment. King against *Liggenham*, 1 *Mod.* 71. King against *Channel*, *Hill.* 2 *George* 2. that was upon Demurrer. King against *Bryan*, *Easter* 3 *George* 2. in all which Cases, held that Indictments did not lie for these Things which are of a private Nature; and Indictment would not lie for making a Fool of a Man; very deficient is bad, 2 *Roll. Abr.* 80 *pl.* 18. *Cro. Jac.* 84. King against *Soerral*, *Cro. Car.* 380. King against *Flint.* 2 *Salk.* 687; in all which this general charge held bad.

Court: This Indictment cannot be maintained, said it was very Faulty, and thought the Offence not indictable; upon the whole Indictment quashed.

The same Term.

The King *against* The Inhabitants of Woolstanton, County of Stafford.

THE Case was this: *Joseph Collison* of the Parish of *Woolstanton*, and a settled Inhabitant there, travelling through *Colwick*, broke his Thigh there, and could not be removed to *Woolstanton* without Danger of his Life, till his Thigh was set; this Misfortune reduced him to Poverty, but before this he had not received any Relief thence; *Collison* was attended by a Surgeon and other proper Helps, but not by the Order of any Officer of *Woolstanton;* two Justices make Orders on the Overseers of the Poor of *Woolstanton*, to pay the Surgeon, etc. the Orders are found *prout*, and the Bills admitted to be reasonable.

Appeal from these Orders to the Sessions, where a Doubt arising as to the Legality of these Orders, the Court ordered, that the Clerk of the Peace, with the Counsel on both Sides, should attend the next Judge of his Majesty's Court of King's Bench that should come to *Stafford* Assizes, who is desired to give his Opinion upon the Case; ordered further, that the Clerk of the Peace should report the Opinion to the Justices at the next general Quarter-Sessions, after such Opinion taken; that the Parties concerned do then and there attend without further Notice, and in the mean time, by Consent of all Parties, the Appeal against the said Orders to be respited and saved without Prejudice to either Side.

The Orders appealed against were three, *viz.* First, for Boarding, Second, for the Nursing, Third, for the Curing the said *Collison*, and were as follows: *Stafford*, to wit. To the Overseers of the Poor of the Parish of *Woolstanton* in the said County.

We whose Hands and Seals are hereunto set and subscribed, two of his Majesty's Justices of the Peace and *Quorum* for the said County, and both of us residing in the same Division, within the said Parish of *Woolstanton*, do hereby order you, the said Overseers, to pay unto *Nicholas Baker* the Sum of sixteen Pounds, and eighteen Shillings for Boarding and other Necessaries, for *Joseph Collison*, a Pauper of the said Parish, whilst he lay ill of a broken fractured Thigh. Dated the first Day of *October Anno Domini* 1731. *Thomas Allen*, *Joseph Jervis.*

The other two were in the same Form, for the Nurse and the Surgeon.

Afterwards, at *Michaelmas* Sessions, an Order is made reciting the three Orders of two Justices, and the Appeal to the Sessions, and the Adjournment by Consent, and that Mr. Justice *Probyn* was at the last Assizes for the said County, and that the Judge being attended gave his Opinion in the Words following.

I am of Opinion, that where any settled Inhabitant of a Parish going upon his lawful Occasion or Business, and by Accident or Misfortune is reduced to a Necessity of being assisted and relieved, the Justices of the Peace have Power to direct and Order the Overseers of the Poor of that Parish to which he belongs, to relieve such Person and to pay for such necessary Support and Assistance as he has received, though by Persons of another Parish; which said Opinion being this Day presented and read to the Court, it is ordered by the Court that the said Orders made by the said two Justices be confirmed, and accordingly by the Court they are confirmed.

Mr. *Parker* to shew Cause why these Orders should not be quashed.

Several Objections have been made to the Form of the Orders, but it appears that the

Merits have been referred to a Judge of Assize, he has heard the Parties and given his Opinion upon the Merits; and therefore it is apprehended all Objections in Point of Form are waived; his Determination is in the Nature of an Award, and final and conclusive between the Parties. A Court of Justice will never allow of a Plea in Abatement, after a Plea in Bar; so if a special Verdict refers a particular Point to the Court; the Court will intend all other Matters but that which is the Doubt of the Jury. *Goodale's* Case, 5 *Co.* 96, 97. 2 *Ro. Abr.* 702. Letter *B. pl.* 4. *Hob.* 262.

First Objection; That the Justices Orders are not concluded properly, with the Words *Given under our Hands and Seals*, but only said *Dated*, etc.

Answer. But it sufficiently appears, that the Orders were under Hand and Seal, for it is said *we whose Hands and Seals are hereunto set.*

Second Objection; That these being Orders for the Relief of poor Persons, it should have appeared to be by Justices residing within the Parish; which it does not, and it is not shewn that there were no Justices within the Parish.

Answ. As to this Objection, the Act is only directory, and like an Order of Removal, which need not be by the Justices of the Division, 2 *Salk.* 473.

Besides, the Act only relates to Orders made for Parish Pay, ordered to a particular Parishioner for Subsistence, and not in this Case.

Third Objection; That it does not appear that the Overseers were summoned before the Orders made, which is required by the Statute 9 *George* 1. *cap.* 7. §. 1.

Answ. The same Answer is to be taken as to this, as was to the last Objection, that the Statute only relates to Parish Pay, ordered to a particular Parishioner for Subsistence, and not to the Instance of Relief, now under the Consideration of the Court. But supposing a Summons necessary, the Court will intend that the Justices proceeded regularly, and that there was a Summons, unless the contrary had appeared on the Face of the Orders.

The King against *Venables, Trin.* 11 *Geo.* 1. Conviction for suppressing a disorderly Ale-house, and Commitment for continuing the Ale-house after the Order to suppress it. It was objected that it did not appear, that the Party was summoned or heard; but resolved by the whole Court, that they would intend the Justices proceeded regularly, and that there was a Summons; and the Conviction was confirmed; indeed the Court declared, that if a defective Summons had been set out, they could not intend a good one.

So in the Case of the King and *Holland, Trin.* 5 *George* 2. which was an Order of Bastardy, though it did not appear that the Defendant was summoned, the Order was confirmed; because the Court would presume that the Justices had done Right; and upon that Occasion, the Cases of the Queen and *Cripps, Easter* 11 *Anne*, the King against *Blackwell, Mich.* 4 *Geo.* and the King against *Clegg, Mich.* 8 *George* 1. were cited, where the same Objections had been over-ruled.

Fourth Objection; It does not appear that the Facts were made out upon Oath.

Answ. This falls under the same Consideration as the last Exception; it is an Incident to be presumed by the Court.

I come now to that which is the principal Question between us, and that is, Whether in case a settled Inhabitant of a Parish going on his lawful Occasions or Business, and by Accident or Misfortune is reduced to a Necessity of being relieved, the Justices of the Peace have Power to Order the Overseers of the Poor of that Parish to which he belongs, to relieve such Person, and to pay for such necessary Support and Assistance as he has received, though from Persons of another Parish?

We are in Possession of the Opinion of the Judge of Assize, that the Justices have that Jurisdiction, and I humbly hope that the Judge's Opinion shall receive the Sanction of this Court.

By Law every Parish is charged with the Relief of their own Poor, and the Justices of the Peace are intrusted with the Care that the Poor shall have the Benefit of this Provision.

The Overseers of the Poor are subordinate to, and are to obey the Orders of the Justices for the Relief of the Poor, unless they are discharged or altered upon an Appeal to a superior Jurisdiction.

The Power which is lodged in the Justices of the Peace, for the Relief of the Poor, is a

general Power, and extends to all kinds of Relief, whether by Medicine or Surgery, the same being particularly specified in 43 *Eliz.* and the Justices Power is not merely confined to the Subsistence, that the Poor may not be famished.

This is a Law of Charity, and founded upon the Divine Law, which exhorts, I should say, commands us to relieve the Sick and Needy, and is therefore to receive a large and equitable Construction.

And if it is to receive a large Construction, why have not Justices of the Peace the Power to make Orders upon the Overseers for the Relief of the Poor out of the Parish, as well as within it; there are no words in the Statute to restrain their Jurisdiction to Poor within the Parish; and Persons who are real Objects of Relief are as much so, out of the Parish as within it.

If a Man meets with a Misfortune fifty Miles from his own Parish, which requires immediate Assistance, if this Notion prevails, that the Justices of the Peace cannot order Relief, the Man must perish, unless the Neighbourhood where the Accident happens, have Humanity enough to relieve him at their own Expence.

This is such a Defect as I hope cannot justly be imputed to the Laws relating to the Poor.

I beg leave to mention a Case which will shew, that it is no new thing for Justices of the Peace to have a Jurisdiction by Implication; by 5 *Eliz. cap.* 4. Power is given to Justices to oblige Servants in Husbandry to serve for Statute Wages, and though the Statute says nothing of compelling the Master to pay the Wages, yet the Courts of Law allow the Justices that Jurisdiction, and will even intend the Service to be in Husbandry, unless the contrary appears. The King against *Gouch*, *Salk.* 441. The King against *Gregory*, *ibid.* 484, 485. The Queen against *London*, *Mod. Cases* 204, 205.

I expect to have some Cases cited where it has been determined, that Justices of the Peace have no Power to make Orders of this Nature; I have looked into several of them, and cannot find that one of those Cases was debated; the King against *Smith*, *Hill.* 10 *George* 1. Indictment quashed on Mr. *Fazakerly's* Motion, because founded on an Order out of the Justices Jurisdiction, having no Relation to the Relief of the Poor. The King against the Inhabitants of *Holbeach*, *Easter* the first of *George* 2. quash'd, no Person appearing to shew Cause. The King against *Slow*, *Mich.* 6 *George* 2. Indictment quash'd, because Justices had no Power to make the Order. The King against the Overseers of *Woodbury* in *Devonshire*, *Mich.* 6. *George* 2. quash'd, no Cause being shew'd.

By the 13 *Eliz. cap.* 2. a convenient Stock is to be provided by the Church-Wardens and Overseers of every Parish, with the Consent of two or more Justices of the Peace, for the Employment of such of the Poor as are able to work, and competent Sums of Money are to be raised for the Relief of the Lame, Impotent, and such others as are not able to work, and they are to do and execute all such other Things as well for the disposing of the Stock, or otherwise concerning the Premisses, as to them shall seem convenient.

In *Dalton's Justice*, *cap.* 40, *fo.* 100. the old Edition, Mr. *Dalton*, in considering what Poor are intitled to Relief, ranks them under two Classes.

First, Poor by Impotency or Defect. The aged and decrepit that are past Labour; and he gives several other Instances.

Second, Poor by Casualty. The Person casually disabled or maimed in his Body, as the Soldier or Labourer maimed in their several Callings; and his Observation upon this is, *si non pavisti occidisti*

But it may be objected, that this is the casual; as to that the Poor are provided for in respect to the Benefit which the Parish where they are settled, is supposed to have received from their Labour; and as the Act of God prejudices no one, it ought not to subject the Parishioners of one Parish to support the Parishioners of another, who by Accident require immediate Relief.

St. John against *St. John*, *Hob.* 78. Debt on Statute 21 *H.* 6. against Defendant as Bailiff of ——— for not returning his Burgess to Parliament, where the Words of the Statute are, That the Sheriff shall send his Precept to the Mayor; if there be no Mayor, then to the Bailiff; the Plaintiff declared that the Sheriff had made his Precept to the Bailiff without

averring there was no Mayor; and, after Verdict for the Plaintiff, it was held upon a Motion in Arrest of Judgment, that the Declaration was good, for the Court will not intend that there was a Mayor except it be shewed, and if there was one, it should come properly on the other Side.

Mr. *Fazakerly, ad idem*, As to the Oath, Justices cannot order Relief without Oath is made, by the Statute, and the Jurisdiction must be conducted by the Restrictions laid down in the Statute, and the Words there are prohibitory to grant Relief without it, and nothing shall be presumed in favour of Orders; this has been the constant Doctrine; does not appear to have been made, nor that the parish had refused; the order is to pay for Boarding and other Necessaries, the Justices have no Power to order any such Payment; it does not appear it was due. *Trin.* 7 *Anne*, The Queen against the Inhabitants of *Balsam;* the three Justices held that the Justices of the Peace had no such Power to order these Payments, but the Persons named in the Order not being well described in the *Certiorari*, the *Certiorari* was quashed.

The same Term.

The King *against* the Inhabitants of *Hexham.*

MR. Serjeant *Draper* moved to quash an Order of Sessions made at *Northumberland. Alexander Johnston* upon hearing of his Appeal from the Order of Sir. *Edward Blackett*, Baronet, and *George Bowes*, Esq; for the Payment of a Weekly Allowance as putative Father, for the Maintenance of a Bastard Child, begotten on the Body of *Eliz. Maughan;* It is ordered that the said Order be, and it is hereby quashed.

Objection 1. Not said to whom the Appeal was made.
2. Nor how much the Allowance was to be.
3. Nor said whether the Child was Male or Female.
4 Nor said where the Child was born, or chargeable to any Parish.
5. Not said he was putative Father of that Child.
6. Nor of what Date the Order is.
7. Nor of what County Sir *E. B.* and *G. B.* are Justices. Shew Cause.

The same Term.

Parish of Stroud *against* Lidney, in Gloucestershire, November 24, 1732.

TWO Justices remove *Martha Brewer* single Woman, from *Stroud* to *Lidney;* the Parish of *Lidney* appeals to the next General Quarter-Sessions, who confirm the Order of two Justices, and state the Case specially, That the said *M. B.* about three Years ago went to the said Parish of *Stroud*, and there hired herself to *William Wake* of the said Parish, Maltster, in Manner following, that is to say, for a Quarter of a Year, and if the said *Wake* and the said *M. B.* liked one another, she was to continue for a Year, and to have three Pounds for her Year's Wages; that she entered on the said Service, and continued therein for one whole Year, and received the said Wages of three Pounds.

Mr. *Yate* moved to quash these Orders, and insisted that this was a Settlement; the Statute is to be favourably construed in Favour of Settlements. *Easter*, 1st *George* 1. *Solebury* against ——— Because these Statutes have taken from People the Right they had at Common Law, under which an Inhabitancy always gained a Man a Settlement; so the Statute which requires a Rentage of a Tenement of ten Pounds *per Annum* to gain a Settlement is satisfied; if a Man rents seven Pounds a Year of one, and three Pounds a Year of another, this gets him a Settlement. *Trin.* 3 *Geo.* 1. *Southsydenham* against *Lamerton.* So a Service for a Quarter of a Year, and then a Hiring for a Year, and a Service for three Quarters, gets a Settlement. The King against the Inhabitants of *Ayno, Mich.* 1 *George* 2. 8 and 9 *W.* 3. is only explanatory of 3 and 4 *W.* and *M.* Here the Contract seems to be made with Caution, for it includes a Year, which is very plain from the Provision that was made for the Settling the Year's Wages; the first Quarter of the Year is distinguished from the rest, because from that Time the Contract was absolute and binding to both Parties; it is true after the Expiration of that Quarter it was in the Election of either Party to determine the Contract; yet as that was not done, but on the contrary the Contract is assented to by both Parties and fully executed, it gains a Settlement.

The same Term.

The King *against* Parkins, Overseer of Studley.

A SINGLE Woman of *Studley* big with Child of a Bastard, was sent back to *Studley*. *Parkins* threatned with all the Severity of the Law to force her to marry a Stranger of another Parish against both his and her Consent, he giving five Guineas to the Husband, and keeping him in Liquor.

By the Court: Shew Cause why Information should not go.

Easter, Sixth of *George* the Second.

The King *against* Crest.

THE Defendant was committed by a Justice of Peace of *Surry*, to the County-Gaol of that County, for a Robbery on the Highway; and being brought into this Court on the Return of an *Habeas Corpus*,

Mr. *Burnett* took Exceptions to the Return, in order to bail the Defendant.

First, It is not said in the Warrant of Commitment, that the Justice was a Justice of the County. 2 *Inst.* 52, 591.

Secondly, It does not appear by the Commitment, that the Defendant was examined in the Presence of the Justice, or brought before him, and without that the Justice has no Authority. *Hale* 92, 3, 4. *Stat.* 2 *P.* and *M. c.* 10. 3 *Ro. Rep.* 192, 218. It is not certain when and where the Robbery was committed, which ought to be in Order, that the Defendant may have the Benefit of the *Hab. Cor.* Act, *Car.* 2. and produced Affidavits to the Fact, and the Court ordered a Rule to Shew Cause, and Notice to the Justice. An Affidavit of Confession of another Man, that the Defendant did the Fact, bailed by four Bail in one hundred Pounds each, and two hundred Pounds the Principal.

The same Term

The King *against* The Inhabitants of Brackley St. Peters.

TWO Justices make an Order to allow eleven Pounds expended for Law Charges. On Appeal to the Sessions they disallow this as not warranted by Law, and order the Church-Wardens and Overseers to refund the Money to the present Overseers, and to be struck out of their Account.

Sir *Thomas Abney* moved to quash the Order of Sessions; now upon full hearing it does not appear when the Sessions was held, but they appear, upon an Appeal to a former Sessions, to have proceeded, and do not say when that first Sessions was held.

2. Church-Wardens Accounts are not examinable by the Sessions, *Salk.* 471. Where Appeal is given by the Statute to two Justices, a Thing cannot commence originally at Sessions; here an Appeal is given; Order is to distinguish to whom it is to be paid, and who are to pay; they have no Power to Order Money to be struck out.

Answ. They determine at the second Sessions; but the Court will presume the first Sessions was held regularly, as the contrary does not appear; better to describe Church-Wardens by their Office than by their Name; *Certum est quod certum Reddi potest;* 'tis certainly so done in Orders of Removal; if they can examine the Accounts on the Statute they may order it to be struck out, the rather as it ought not to have been in.

Mr. *Fazakerly* in shewing Cause.

The *First Exception;* That it does not appear that the Appeal was regularly adjourned.

Second Exception; That it does not appear when the first Sessions was held.

The Day does appear, that first Sessions was held on a particular Day, but as to the Adjournment of the Appeal, when once there is an Appeal lodged, it is not necessary to adjourn.

And the Construction of 43 *Eliz.* has been, that it is not material whether it is heard one Day or another.

Third Exception; That Disbursements of Church-Wardens are not examinable at Sessions,

but Church-Wardens have two Capacities; one as Overseers, not by Virtue of any Appointment, but by Virtue of the Statute.

Mr. *Noel* on the same Side: This is not like the Cases where an Appeal must be lodged at the next Sessons, but the Law is open in this Case, and though it was necessary it should be adjourned, yet it is not necessary the Adjournment should appear on the Order.

2. Time does appear.

As to the Third, it must be taken in this Case, that nothing of the Office of Church-Wardens, but what was conjoined to the Office of Overseers, was in Question in this Case.

Sir *Thomas Abney* in Support of the Exceptions: The Appeal being made at the former Sessions, it does not appear what was done on that Appeal, which ought to appear; and the Sessions must make some Entry upon it to shew what they have done, taking it for granted, by the Act of Parliament they may appeal at any Time, yet must shew when the Sessions was held, for it does not appear it was held at a Time they had Power to hold a Sessions. The King against *Saunders*.

As to the Third, It is not shewn that Church-Wardens acted as Overseers, and that it is relating to any Disbursements as such.

4. Whenever an Act of Parliament gives an Appeal from two Justices, the Sessions cannot proceed in the first instance. *Salk.* 471.

The Order is for the Church-Wardens and Overseers of 1730, to pay to the present Church-Wardens, which was in 1732, which is an Order neither the two Justices nor Sessions could make; they ought to have granted a Warrant of Distress; Sessions could not make an Order to strike out Part of the Disbursements; it does not appear to what Church-Wardens they were to pay.

Mr. *Fazakerly*: This Court will in no Instance presume the Sessions irregular, unless it appears; if it be said there was an Appeal, it is not necessary to show what Day the Sessions was held, for it is of no Use; and they have said they have heard this Appeal; it is sufficient, and Court will intend every thing antecedent right.

It appears this was an Appeal against the Disbursements of the Church-Wardens and Overseers of the Poor, and therefore must be taken to be by Virtue of the Power they are invested with by the Statute. The Clause expressly mentions a Cess, and gives an Appeal to the Sessions; the two Justices have nothing to do but only to state the Account; there is no occasion for any Order to be made by the two Justices, only to allow, unless they find a Surplus in the Officer's Hand, then they are to make an Order to pay over.

As to the Exception, That this Disbursement was in 1730, and Order in 1732, therefore an intervening Year; if an Act of Parliament gives a Liberty to come and appeal at any Time, the Order must be made on the present Officers then acting in that Capacity, and in an Action of Account in this Court it has been held better to describe Overseers by their Name of Office. As to ordering to strike it out of the Article of the Account, they are enabled by the Act to take such Order as they think fit, and therefore might properly do it. The Court took Time to consider of it.

Trinity, Sixth and Seventh of *George* the Second.

The King *against* Cotton.

MOTION for an Information against Defendant, who with another Justice made an Order of Bastardy upon one *Fitzgerald*, without summoning him to appear before them to make his Defence; upon Appeal to the Sessions he was acquitted, and put to great Expences, which it was insisted was contrary to natural Justice. By 18 *Eliz. c.* 3. the Justices upon Examination of the Cause and Circumstances, may make an Order according to their Discretion. *Mich.* 13 *Geo.* 1. The King against *Cleg*. The King against *Holland*. The King against *Venables*. The King against *Squire* and *Allington*, *Hill.* 12 *Geo.* 1. and Summons is as old as the Creation. 3 *Gen. v.* 9.

On a Rule to shew Cause, Serjeant *Corbet* for the Defendant: On penal Statutes the Defendant has only a Time in the first Instance to make his Defence; but in Cases of

Bastardy it is different, for he has a proper Time by the Statute given to be heard at the Sessions; no more necessary to have Notice here than in Indictment.

But by Mr. Justice *Page:* This is a Judgment, the other is no more than a Charge; it would not be necessary, in Cases of Removal, to give Notice to the Parish to whom the Pauper is sent, which is never done. *Mich.* 4 *Geo.* 1. The King against *Blackwell.* Order of Bastardy good, though it did not appear the Party was summoned.

Sir *Thomas Abney* on the other Side: This is an Adjudication, and equal to a Conviction; an Indictment is only a Charge till the Judgment.

Mr. Serjeant *Hayward:* Examination requisite by the Statute; deprived of his Testimony.

Mr. Justice *Page:* No Man in an Office can be supposed to be so ignorant as not to know it is against natural Justice to convict a Man without a Summons; the Examination ought to be so made that the Truth may appear, and that must be by examining both Sides, otherwise it is partial; the Scandal, the Expence and the Disorder in Mr. *Fitzgerald's* Family, are Things that ought to be considered; here was no Taking by Warrant, and therefore an Action of false Imprisonment would not lie; and this is the only Method can be used to punish the Justice.

Mr. Justice *Probyn:* The principal Objection about a Summons is right in Law, and in Reason; though Appeal is given, yet the Order is a Judgment, and puts the Man under Difficulties; possibly an Action on the Case might be framed; this may possibly have been only an Error in Judgment; hard to grant Information.

Mr. Justice *Lee:* If this was strictly a Conviction, an Information ought to be granted; but it is otherwise in the Case of Orders; and no Summons was then held to be necessary to be set out; I do not give any Judgment where a Summons is necessary, and it is doubtful whether this Summons is necessary. Discharged the Rule.

And if Justices take up a Man by Warrant for being putative Father, they may bind him over to Sessions without making an Order, and Sessions may make an original Order.

The same Term.

The King *against* the Commissioners of Sewers in Sussex.

NOTICE must be given to the Commissioners of Sewers before the Court will grant a *Certiorari* to remove their Orders.

The same Term.

The King *against* Brooke.

THE *Christmas* Sessions at *Chester* make an Order; *Whereas John Barloe* of *Congelton* hath appealed to this Court, thereby complaining, etc. Sessions has no Jurisdiction; as the Stones were not got by Order of five or more Trustees, necessary to shew their Jurisdiction, and the Party may bring his Action for the Gravel. The King against *Abell,* 5 *Geo.* 2. *Trin.*

The Sessions, to which the Appeal is made, is not said to be the next after the Fact was done against the Allowance made him by the Trustees of the Roads, nominated and appointed by Virtue of a Statute made for repairing the Roads leading from the Southern Parts of *But-Lane* in the Parish of *Lawton* in *Cheshire,* to *Lawton But-Lane,* and from thence to *Henshalls Smythy* upon *Cranage Green,* for Materials had and taken out of his Lands for repairing the said Road; the Appeal is respited to the next General Quarter Sessions.

The *Easter* Sessions make an Order; *Whereas* by the Statute made for the Repairing, etc. It is enacted, That the Trustees of the Roads therein nominated and appointed, or any five or more of them, might appoint a fit Person to be Surveyor of the Roads to see the same be repaired; that such Surveyor might, by Order of the said Trustees, or any five or more of them, dig or gather, in the several Grounds of any Person, such Materials as in the said Act are mentioned, and to carry away the same for repairing the said Roads, paying for the same such Rate as the said Trustees, or any five or more of them, should judge reasonable; and that if any Difference should arise between the Trustees, and the Owner or Occupier of such Ground, touching the Damages thereby done to such Owner, the Justices of the Peace at the

next General Quarter-Sessions of the Peace to be held for the said County, should adjudge, assess and finally determine the same. *And Whereas J. B.* of *C.* did appeal to the *Christmas Sessions* against the Rates allowed him by the Trustees, for Stones gathered and carried away out of his Ground, for the Repairs of the Roads, by or by the Order and Appointment of *S. B.* nominated Surveyor of the said Roads, in Pursuance of the said Statute; upon hearing which Appeal *that Sessions* continue it over to the next. Now upon hearing which Appeal, it is ordered by the last mentioned Sessions, that the said *S. B.* do further, upon Notice of this Order, by a copy thereof to him delivered, pay unto the said *J. B.* the Sum of ten Pounds *per* Tun for his Damages, for every Tun of Stones by him the said *S. B.* or by his Order carried away out of the Grounds of the said *J. B.* for Repair of the said Road mentioned in the said Statute. *Stat.* 4 *George* 2. *fo.* 77, 78.

Objection; If the Surveyors have no Orders, *Barloe's* only Remedy is by Action, and in a summary way.

The Appeal is lodged, and nothing to appeal from; but is supposed to come originally to the Sessions.

The Order not stating that the Trustees and Proprietors did not agree about the Rate, nor does it appear that the Stones were carried away.

The *King* against *Abell, Trin.* 2 *Geo.* 2. Mr. *Fazakerly* moved to quash a Conviction against the Defendant for not accounting according to a Clause in a Turnpike Act; and excepted to the Conviction, that it did not appear by the Evidence set forth in the Conviction, that *Abel* was appointed Receiver, which he ought to have been, or else there is no Jurisdiction arises to the Justices; and then the Court thought that a fatal Exception. Shew Cause.

The same Term.

The King *against* Fuller.

CONVICTION for selling Brandy without Licence; Objection 12 and 13 *W.* 3. *cap.* 11. §. 18. prohibits selling Brandy by Retail to be drank in their Houses without Licence, and puts them on the footing with Alehouses. 7 *Anne, cap.* 14. As for Distillers, and all other Shopkeepers who do not suffer Tipling; and the former Statute is repeal'd, 2 *Geo.* 2. *fo.* 343. No Person presume to sell Liquors in any less Quantity than a Gallon, without Licence.

2. Penalties forty Pounds to the Poor; the other fifty Pounds; one to the King, the other to the Informer; not said on whose Behalf the Information was made; undertook to sell Brandy without Licence, not said how much, *Anstell* against *Andrews*, on *Qui tam, Mich.* 13 *Geo.* 1. *B. R.* Information says he sold by Retail; but does not say what that Retail was, and 2 *Geo.* 2. does not oblige Persons to take a Licence, unless to sell under a Gallon; and a Gallon is Retail Measure; does not say Oath was made of his being summoned; nor that it appeared to them he was summoned; not said when and where Defendant was convicted; nor to whom the Forfeiture was to be paid; does not appear he permitted tippling in his House; does not appear but Defendant dealt more in other Goods; nor that it was a common tippling House; Witnesses ought to be examined at the Time of Conviction, when a Day was given to appear, they do not *prove* it was drank in his House; but *say* it was drank in his House; it is said he was summoned; but not said by whom, and the Reason is because if he is not summoned he might have an Action against him for a false Return of a Summons. Quash'd.

Hilary, Sixth of *George* the Second.

Parish of Eardisland *against* Lempster.

TO Shew Cause why Order of Sessions should not be quash'd; *E. W.* hired from the End of *May* to the beginning of *May* following; then was hired for a Year with the same Master, and served till the middle of *July*, and then ran away without his Consent, and cited *Stat.* 5 *Eliz.* to oblige Servants to stay, and 12 *Car.* 2. and 3 and 4 *W.* and *M.* and 8 and 9 *W.* 3.

Mr. *Fazakerly* agreed, That the Latter Cases have held that a Service under different Hirings to be good; here the Church-Wardens of *Eardisland* complain that *E. W.* single Woman, came lately to dwell in said Parish of *E.* not having gained a legal Settlement there, nor produced a Certificate to them, owning her to be settled elsewhere, and that *E. W.* is now with Child of a Bastard, and likely to become Chargeable to *E.* and as it appears to be true that she is settled in *L.* she is removed from *E.* to *L.*

The Sessions discharge the Order of the two Justices, and state specially, That it appeared by the Oath of the said *E. W.* that she was hired by *S. M.* of *C.* in the said out Parish of *L.* as a Covenant Servant, from the latter end of *May* 1731, to the beginning of *May* 1732, for two Pounds two Shillings and six Pence Wages, and that she continued in her Service for that Time; that about a Day or two before the Expiration of the Time, she was again hired by the same Master for a whole Year, at two Pounds five Shillings Wages, and continued in the same Service, pursuant to the second Hiring, to the middle of *July* following, and then went away from her Service without her Master's Consent. The King against the Inhabitants of *Aynoe*, *Mich.* 4 *Geo.* 2. The Order of Sessions was quash'd.

The same Term.

The King *against* Mather.

JUSTICE of Peace not punishable for what he does in Sessions. *Stamford* 173, 12 *Co.* 23. 2 *R.* 3. 10. Abbot of *Croyland's* Case, *Parliament Cases* 24.

Michaelmas, Seventh of *George* the Second.

The King *against* Joakam.

ON shewing Cause why an Information *qui tam* should not be quash'd,
Mr. *Lacey* said, It is the Party's Suit, and in the Nature of a civil Action, *Cro. Car.* 316, 4 *Inst.* 272. it is only a Direction to the Officer, and the Information would be good without Affidavit, even on a Writ of Error. *Carth.* 503. *Salk* 376. The Affidavit was made by another Person than the Informer, for the Words of the Act mention Informer, or Relator, and therefore not necessary to have the Informer's Affidavit. On the other Side it was said, That the Information coming in by *Certiorari*, the Defendant cannot take Advantage of this by any other way, nor can the Information be taken off the File, so it must be quashed, or the Party be without Remedy. The Information is good, but irregularly filed without Affidavit, like an Action brought where a Man is to be held to Bail; if no Affidavit is made before the Writ sued out Proceedings are irregular.

Mr. *Lacy:* The Offence was committed before the Time laid in the Information, though after Sessions begun, which is like a special *Memorandum*, which the Court agreed to be well enough. Adjourned.

The same Term.

The King *against* Bletsho and another.

A *MANDAMUS* had been granted to the Defendants Church-Wardens of *St. George* in *Stamford*, to deliver up all the Publick Books and Papers in their Custody.

Sir *Thomas Abney* moved to supersede this *Mandamus*, as it will deprive Defendants of the Benefit of making Defence if they are sued for Money had and received by any of the Parish; and besides there is a proper Jurisdiction in the Justices of the County, nor does the Affidavit, on which this *Mandamus* was granted, specify what sort of Writings are in their Custody.

Mr. Justice *Page* said, he did not know how the Poor could be relieved, unless the succeeding Overseers can see how the Money has been disposed of.

N. B. The *Mandamus* was prayed by some that called themselves Overseers, against others that were actually Overseers. Court would not grant it.

The same Term.

The King *against* Kempson.

ORDER on Complaint of Church-Wardens of ——— made at *Stafford*, upon an Appeal confirmed on Defendant to maintain his Son's Wife after a Divorce *a mensa* and *thoro*.

The General Quarter-Sessions only have a Jurisdiction *ab initio*, and the Matter cannot come before them *per saltum* by way of Appeal.

2 *Salk.* 476. *Trin.* 5 *Geo.* 1. The King against *Mundy*. Order to maintain the Party's Wife's Mother, and held the Statute did not extend to Collaterals; Rule to shew Cause on Sir *Thomas Abney's* Motion to quash; 43 *Eliz.* is but only to natural Relations.

The same Term.

The King *against* Gallard.

THE Defendant was indicted at the Sessions held for the County of the City of *Norwich*, that he being a Person above the Age of nineteen Years, and of disorderly Behaviour and ill Fame, abetting, assisting and incouraging of one *Thomas Hacon* to run naked, except Garters and Stockings, in a certain publick Place, within the Walls of the said City, called *Chapple-Field*, on the 9th Day of *May* in the 6th Year of *George* 2. at the City of *Norwich*, in the County of the same City, in a certain publick Place there within the Walls of the said City, called *Chapple-Field*, with Force and Arms, of his own free Will immodestly, openly, and publickly did appear and shew himself running with the said *T. H.* for the Space of one Hour, with his Body naked, and without any Covering from his Neck to the Waste, to and amongst a great Number of the King's good Subjects of both Sexes, then being and walking in the said Place or Field, and laid over again for shewing himself for half an Hour, etc. to the great Scandal, Disturbance and Offence of his Majesty's good Subjects then and there being, contrary to all Morality, Decency and good Order, and against the Peace of our Sovereign Lord the King, his Crown and Dignity.

Sir *John Strange* moved to quash this Indictment, because here is no Charge against *Hacon* that he did run naked, but only recites the Abetting of *Gallard*.

It does not say in their Presence, they might be walking in the said Field at a great Distance; besides if this is an Offence, it would arraign that Punishment prescribed by the *Stat.* of Queen *Anne*, of whipping Vagrants naked, from the Shoulders to the Waste downward; indeed if the Defendant had run naked, it might be considered within the Meaning of Sir *Charles Sedley's* Case, but the Defendant only ran stript from the Neck to the Waste. A Rule was made to shew Cause, which was afterwards made absolute.

The same Term.

The King *against* Murrell.

AN Appointment by two Justices of Overseers of the Poor of the Parish of *Utoxeter* was quash'd, because it is not said where they live, or that they were Inhabitants.

The same Term.

The King *against* Lloyd.

MR. *Fazakerly* to shew Cause for the Defendant, who was convicted on Articles against him, and removed from his Office of Clerk of the Peace of the County of *Cardigan*, for taking several Sums of Money extorsively, as Fees as Clerk of the Peace.

Exception; They do not set out any Evidence on which they ground their Conviction; and if this ought to be done on Conviction, it must be so in this Case; and the Sessions must adjudge him guilty of Misdemeanours before they can convict him; and this is in the Nature of a Conviction, and they have always been treated as such by the Course of the Court, by being put in the Paper as this is, *Whereas* Orders are every Day determined on Motion, and if it be taken as a Conviction, the Evidence must be set out, for if the Court

cannot see for what he is convicted, they will not let him be deprived of his Freehold. An Exception that runs through the whole, the Articles are for Matters at the Sessions, and it does not appear a Sessions was held; for it only says he was removed at a Sessions held before his Majesty's Justices of the Peace (*quorum unus*) but does not in any Article shew before whom or at what Time, which ought to be in this Article, though the Style of the Sessions be right in the Caption.

Mr. Serjeant *Draper* on the other side: All Cases of Conviction are before the Justices met at the Sessions. Queen against *Bary*, 13 *Anne.* The King against *Harrol*, the Statute says, That upon Examination and due Proof, but does not say the Charge shall be in Writing. 2 *R. A.* 298. This Court will not alter the Course of Proceeding of any Court.

This Order is not liable to the Objection of Convictions.

The Queen against *Harwell*, 11 *Anne.* The King against *Harland.* The Queen against *Baily*, in *Salk. tit.* Usury. As to the Objection that it does not appear by the Articles of the Charge, that there was any Sessions held at that Time legally; there is no Necessity for it.

Reply; It is in Favour of the Defendant that the Evidence should be set out.

No Difference between a Court of Sessions, if they begin there, and two Justices who have Power to convict; equal as to this Point; it is said the Charge shall be in Writing, but not the Examination; is not the Argument the same in the Case where two Justices convict? no more is mentioned in those Statutes, yet this Court will see the Evidence, and their Authority is the same whether in Sessions or not; no Determination in the King against *Harrell*, and the King against *Harland* was quash'd. No Difference between an Order and Conviction; must set out in both Cases, before whom and when Sessions held, and their Authority. Justices are Conservators of the Peace out of Sessions, and as to taking extorsively, they must make a Case that in its Nature shews it was an Extortion, and that this Money so received was in a Matter in which his Office was concerned, and that must be at Sessions.

Chief Justice: It has been long held in this Court, that in summary Convictions Substance of the Evidence must be set out; their Names, and that they did depose. *Easter* 13 *Anne*, the Queen against *Brown. Hill.* 12 *Anne*, the Queen against *Green.*

The Question is how this differs. Answer is, that this is in a Court of Sessions, and not as two Justices; but Objection to this is, That it is not a Power according to their ordinary Course of Proceeding, and that it has been said that it should be tried by a Jury, but that has been over-ruled; therefore this is a summary Conviction. Another Answer has been, That here is no Penalty to the Informer, and that was the Reason in the Cases cited. But this is not the true Ground, because where the Names of the Witnesses have been set out, and not the Substance of the Evidence, those Convictions have been quash'd. They do not so much as say they have proceeded by Proof upon Oath. I see no great Inconvenience would be, or greater Length of Record, in setting out the material Part of the Evidence; for here they have set out the Articles, and suppose they had said such swore so and so, it had been clear; and to deprive a Man of his Freehold in this summary way seems hard; therefore thought the Evidence should be set out. As to Exception at being at the Sessions, it is said at a General Quarter-Sessions, and that he extorted *Colore Officii* seems sufficient; but it is proper to be spoke to again.

Mr. Justice *Lee* thought it would be necessary next Argument to lay before the Court in the Case of Orders, what Evidence is ever set out, and what in Cases of Excise; on Appeal to Sessions. In Bastardy it is not necessary where Sessions have an original Jurisdiction.

Sir *Thomas Denison* for the Defendant on the last Argument; the Objection was, That it did not appear upon what Evidence Sessions convicted Defendant; agreed on provisionary Laws; where Power is given to Justices out of Sessions, if Orders returned here, Court will agree they have done Right.

On the other hand, in Case of penal Laws, it must be allowed to me, the Evidence must be set out, and so it has been held in the King against *Theed*, in Conviction, where most of the Cases are cited.

It has been endeavoured to distinguish this from the Cases of Convictions by private Justices; because this was at the Quarter-Sessions, and said that a Court of Record need not set out the Reason of their Judgment.

That this is a Conviction, it being upon Articles; no great Difference between Order at Quarter, General or Special Sessions. So on the Statute of Bastardy, depends on Words of the Statute that this Court will intend Summons; but this is a penal Law, and deprives a Man of his Freehold; this cannot be taken to be a Judgment, because this is a new Method of Proceeding; they don't in this Case proceed as a Court of Quarter-Sessions, because then it must be by Jury.

Where by Jury, there they do not record the Evidence, but otherwise they do so in superior Courts, they give Judgment upon the Evidence as in Dower, 2 *R. A.* 577. *Co. Litt.* 6. Abbot of *Strata Marcella's* Case, 9 *Co.* 30.

1 *And.* 20. *Rastall's Entries* 228.

In these Cases superior Courts set out the Evidence in the Record, the same Reasons are in Cases of Demurrers upon Evidence. So in Cases of Proof of a Suggestion, *Co. Entr.* 463. *Rastall's Entr. Cro. Eliz.* 736. The Queen against *Baynes*, 2 *Salk.* 680, shews the Strictness that was on that Act.

Chief Justice said, That if there was a material Exception taken in that Case, that was not in the Queen against *Baynes*, it deserved to be considered.

Sir *Thomas Dennison:* No Case at Sessions that is like this, the same Reason, if not a greater, is with us, because no Remedy.

Sir *John Strange:* This is a Proceeding founded upon the *Stat.* 1 *W.* and *M.* three Things are required by this Statute, and all observed in this Case.

As to the Objection, that this is in Nature of a Conviction, Summons and Evidence ought to be set out, but this is different.

First, As it is an Order, but not a Conviction. Secondly, That it was at the Quarter-Sessions. Those that have been in *English*, whereas Convictions always in *Latin* till of late.

In Bastardy, Summons not necessary, that always construed an Order, though *contra bonos mores.*

In Orders of Removal, say Party was settled, and not bound to set out, that he had not ten Pounds *per Ann.* etc.

It is further proved by Orders for Wages, which Court intend in Husbandry.

The King against the Inhabitants of *Mitchham*, 7 *Geo.* 1. on Statute to appoint Collectors of Duties on Births and Burials. Objection; Did not appear he was appointed for a Year, but on looking into the Statute Court found Commissioners Power was to appoint for a Year.

Extended to Convictions. The King against *Ford, Trin.* 9 *Geo.* 1. and that it lay on Defendant to shew he had been punished on *Stat. Edw.* 6. So the King against *Theed, Trin.* 5 and 6 *Geo.* 2. for Obstruction against Exciseman. So in Game Acts, in the Judgment of the Justice not being qualified according to Law is good; otherwise where they are the Words of the Witnesses.

Secondly; This is an Order of Quarter-Sessions who never record Evidence; besides if so, he was the proper Person to take it; it is said it shall be openly in Quarter-Sessions, which must be taken to be Evidence *viva voce.*

There have been but three of these sort of Orders in this Court, since the *Stat. W.* and *M.* The Queen against *Baynes.* The King against *Forwell.* The King against *Harland*, and all in this manner.

The King against *Hartland* was quash'd on an Exception by Mr. Justice *Eyre*, that not a sufficient Number of Justices appeared to make a Sessions.

If it had been a Jury, Justices might have, on Evidence, allowed what was not legally so.

It is said the Reason is in Bastardy, it is left to the Discretion of the Justices, but Discretion must mean a legal Discretion.

In the Case of Demurrers there is a Necessity to set out, otherwise the Court cannot judge. So in Bills of Exceptions; in this Case no Necessity, because an Order and not a Conviction.

Sir *Thomas Denison* replied as to its being an Order, because in *English* it is the Nature of the Charge that makes it a Conviction.

As to the matter of an Order of Bastardy, I take that to be a singular Case.

No Offence at Common Law; here it was for Extortion, and might have been tried by a Jury.

The same Term.

The King *against* Joakam.

MR. *Lacy*, to shew Cause why an Information *qui tam* should not be quash'd, insisted that an Information *qui tam* was never quash'd. *Co. Lit.* 139. It is a sort of civil Suit, an Informer *qui tam* may be nonsuit; but it is said here is an Objection that is out of the Record, which is, that a proper Affidavit is not annex'd according to the Statute, *Carth.* 503, 1 *Salk.* 376. the Statute of *James*; but that Act is only directory to the Officer not to file an Information without Affidavit; an Information cannot be quash'd but for a clear Fault in it, which might be fatal on Demurrer, or erroneous on a Writ of Error. *Cro. Car.* 316. 4 *Inst.* 272. 18 *Eliz. c.* 5. Informer pays Costs, etc. That the Merits are with us, Statute 21 *Jac. c.* 3. and the Oath, though not of the Informer, is of the Relator, and so stiled in the Affidavit, and the Stress of the Objection is, that it must be on the Oath of the Informer only, and if the Statute shall be taken conjunctively, the Party informing will be under Difficulty, because he cannot be a Witness, if the Offence is only known to one Person. As to the Objection, that the Fact is laid subsequent to the Time of the Sessions, that was over-ruled last Time; if it be taken separately, then the Oath of the Relator will be good.

Mr. *Filmer:* As to the Information not being quash'd upon Motion, this is the only Remedy; no Advantage could be had of this on Demurrer; because out of the Information; the Case in *Salk.* was upon Statute *W.* 3. where the Court may go on without any Recognizance; because the Court has a Jurisdiction, but this is an Offence against 5 and 6 *Edw.* 6. *c.* 14. and if the Information be not laid in the proper County, it is different, because by this Statute Jurisdiction of this Court is taken away.

Chief Justice: The present Motion is improper, and I do not know any Information moved to be quash'd; and it is said in *Salk.* 372. an Information by Attorney General cannot be quash'd; but if an Information could be quash'd, it must be for something that appears on the Record, and not for a Matter extrinsick, therefore no Foundation in the present Case. A Relator in Law is no more than an Informer was in old Time; if it was irregular, Motion should be to take it off the File.

Agreed, Mr. *Lacy's* Objection of the Fact's being only known to one Person.

Mr. Justice *Page:* Act is directory; no such till *Stat. W.* 3. as Relator in Law.

Mr. Justice *Lee* thought this Rule was a Mistake, for this is not an Exception that could be taken on the Face of the Record. Rule discharged.

The same Term.

The King *against* Wright.

UPON Motion to shew Cause against an Information for forcing one *Wateridge* to a Madhouse, and confining him there; the Question was, Whether the Affidavit of *Wateridge's* Wife could be read for the Defendent? It was insisted by Serjeant *Chappel* and others, for the Defendants, that *Wateridge* was not an immediate Party to this Prosecution, or if he was, yet that the Affidavit of his Wife might be read upon the Motion, though she should not be admitted as a Witness in the Trial; but it was said that she would be a Witness upon the Trial.

Sir *John Strange* on the other Side: Before any Information can be filed, a Recognizance must be entered into by the Prosecutor, and therefore *Wateridge* is consequently concerned in the Event of the Prosecution.

But the Court permitted her Affidavit to be read, leaving the Point undermined whether she could be a Witness upon the Trial.

The same Term.

The King *against* White.

THE Defendant was a Burgess of *Calne* in *Wiltshire* when he was under Age, and sworn when he was of full Age; and Information in the nature of *Quo Warranto* granted to

try whether he was capable of being elected or not. *Co. Litt. Marsh* 40. *Cro. Car. Young* and *Fowler.*

The same Term.

The King *against* Bullein.

ON Motion for an Information in nature of *Quo Warranto*, the Defendant was charged with being chosen Capital Burgess twice, *viz.* in *July* and *September*, and acted under both; the Defendant disclaimed on the Election in *July*, and set up his Right under the Election in *September*, by his Affidavit, and prayed the Information might be filed against him as acting in *September* only, or else that two Informations might be filed against him. But the Court refused.

The same Term.

The King *against* Leder.

MR. *Marsh* moved for the Prosecutor to quash a Presentment made against the Defendant for going about the Town of *Guilford* in a tumultuous manner. First Exception, that there is no Addition; Second, No *Venue*; Third, That going about is said to be in the Night between the third and fourth of *September* last, and there is no such Time, for it should have been laid on one of those Days; Fourth, It is not said he did go about, but only going. Quash'd.

The same Term.

The King *against* Hall.

DEFENDANT was indicted for Perjury at *Newcastle*, and Mr. *Kettleby* moved in Arrest of Judgment, and made an Objection to the Awarding the *Venire*, that it was *de Castro Castri novi Castri, Carth.* 235. 2 *Show.* 147. 1 *Syd.* 15.

Hilary, Seventh of *George* the Second.

The King *against* Hooper.

MR. *Hussey* moved for an Information against the Defendant, for a violent Assault and Battery committed in *Newfoundland.*

The Court refused the Motion, the Offence being local, as well in Informations as Indictments, and as to *Newfoundland* being Part of the King's Dominions, it makes no Difference.

Chief Justice said there was a particular Act of Parliament relating to Offences committed by Governors of Plantations in *W.* 3, which was the only Provision made for an Information for Offences committed abroad, and Plaintiff must bring his Action.

Easter, Seventh of *George* the Second.

The King *against* The Justices of the Peace of Surry.

AN Application had been made to this Court last Term, for a *Mandamus* to the Justices of *Surry*, to direct the Clerk of the Peace to make an Assignment of Mrs. *Robinson's* Effects, late a Prisoner, and discharged by Statute 2 *Geo.* 2. to *Richard Medcalf*, one of her Creditors, in Trust for himself and the rest of the Creditors; and a Rule had been made to shew Cause.

Sir *John Strange* in shewing Cause said, That the Court would not make the Rule absolute for a particular *Mandamus*; agreed that the Court having a superintendant Jurisdiction over inferior Jurisdictions will oblige them by *Mandamus* to execute their Jurisdiction generally, and said he did not oppose a general *Mandamus.*

Mr. Serjeant *Wynne* on the other Side hoped, upon the Circumstances of the Case, the Court would make this Rule absolute for a particular *Mandamus*, and said, That by the Affidavit read in Court, it did appear there were only five Creditors; three of them were actual Prisoners; the fourth, Sir *William Joliffe*, claimed a very large Debt, as due to him,

which was a controvertible Matter, and all, or the greatest Part, of his Debt disputed, and was besides in Possession of Mrs. *Robinson's* Effects, and that *Metcalf* was the only Creditor who stood clear of Objection; that it also appeared four Creditors, *viz.* all but Sir *William Jolliffe*, had petitioned the Sessions that the Clerk of the Peace might make an Assignment to *Metcalf*, that the Court had, in many Instances, sent particular *Mandamus's*, *viz. Hil.* 3. *Geo.* 1. *Mandamus* to Quarter-Sessions, to give Judgment for the Abatement of a Nusance, *Mich.* 5 *Geo.* 1. *Mandamus* to the Court of *Sandwich*, to give Judgment in a Case of Assault and Battery, *Mich.* 6. *Geo.* 1. *Mandamus* to Sessions, to receive Appeal, *Trin.* 6 *Geo.* 1. and 2. *Geo.* 2. *Mandamus* to Bailiffs of *Andover*, to give Judgment, *Mandamus* to two Justices, to hear and determine an Information for running of Brandy, *Mich.* 9 *Geo.* 1.

Baily against *Burn*, *Mich.* 7 *Geo.* 1. *Mandamus* to Sheriff's Court, to give final Judgment on a Writ of Enquiry return'd, they had refused, as thinking the Damages excessive, and they had a mind to have granted a new Trial.

1 *Vent.* 187, *Mandamus* to Mayor and Aldermen of *London*, to give Judgment upon the 22 *Car.* 2. for appointing Markets after the fire of *London*, where the Court considered them only as ministerial; and Lord *Suffolk's* Case about two Terms ago, which was a *Mandamus* to the Archbishop's Court, to grant Administration to Lord *Suffolk* of his Father's Estate.

But by the Court the Sessions are Judges of the Circumstances of the Case, and we cannot enter into this without examining all the Requisites of the Act, to see if they have been complied with, and said they would grant a general *Mandamus* to direct an Assignment, but not to any particular person; and the Rule was varied, and made absolute accordingly.

Note; It appears that all the Cases cited amount to nothing more than a Command of this Court to the inferior Courts, to execute their Authority; and though where the Case itself is circumscribed and ascertained, and the *Mandamus* particularizes the Thing, that does not prove that this Court will, in the present Case, determine upon the Merits, for thereby they would take upon themselves an original Jurisdiction to execute this Statute; and in Lord *Suffolk's* Case my Lady *Suffolk* had offered a Renunciation, and she being the Widow, there was no other Person left but Lord *Suffolk*, the Son, that was intitled to Administration, and therefore nothing remaining for the Court below to exercise their Direction.

The same Term.

The King *against* Heslopp.

MR. *Filmer* moved to quash an Order of Bastardy, and objected.

First, It did not appear either of the Justices was of the *Quorum*, which was directed by 18 *Eliz.*

Secondly, That it was not adjudged that the Bastard was born in the Parish. The King against *Godfrey*, *Trin.* 10 *Geo.* 1.

Thirdly, Security directed to be given; which the Act does not direct.

Sir *John Strange* on the other Side, as to the first Exception, said, That these were Corporation Justices, and not within the Statute.

The Court seemed to think no Difference by the Act of Parliament, and made a Rule to shew Cause.

Sir *John Strange* on shewing Cause said, As to the giving Security, he submitted that the Orders should be quashed *quoad* that; as to the second Exception, the Words of the Order do ascertain the Parish.

And as to the third, relating to the Authority being in two Justices, *quorum unus*, did not know of any Case where a Distinction is taken between County or Corporation or Burrough Justices, so as to confine the Statute of *Eliz.* to County Justices, but said that by 3. *Car.* 1. *cap.* 5. Authority is given to all Justices within their Districts to execute the Statute of *Eliz.* which enlarged the Authority, and cast it upon every Justice of Peace to execute the Law.

Chief Justice thought that 3 *Car.* 1. did no way alter the Jurisdiction, and that struck at the whole Order. By the Court Quash'd.

The same Term.

The King *against* The Inhabitants of Sandridge.

SPECIAL Case, a Demise by Indentures from *Thomas Perchin*, of a Cottage to *Thomas Gates* the Father, at five Shillings Rent for ninety-nine Years; that the Lessee held it till his Death, and by his Will devised it to the Pauper *Thomas Gates* his Son, upon Condition that the Devisee should pay his Mother twenty Pounds, if she should live to expend it; and it is found that she died soon after the Testator; and that it does not appear that the twenty Pounds were paid; and that it is found that the five Shillings *per Annum* is the full Value of the Premisses; and the two Justices held this no Settlement, and the Order of Removal was confirmed at Sessions.

Sir *John Strange* moved to quash this Order, and objected, That a Term was undoubtedly a Settlement, and was so held in the Case of *Mursly* and *Grandborough*, *Trin.* 4 *Geo.* 1. and so it has been in the Case of a Copyhold, *Harrow* against *Edger*, and though the Condition here in the Will be not performed, yet the Son, as Executor, was intitled to the Term, and has a Right to enter on it.

Chief Justice: The Justices are not to Judge of the Title, and a Rule was granted to shew Cause, upon which he said the stating the five Shillings to be the full annual Value, seemed to differ this Case, and the Court took Time till next Term to look into the Case of *Mursley* against *Grandbourgh*.

Chief Justice: Where a Man lives upon his own, is a Case of a very tender Nature, and no Difference between Leasehold and Freehold, unless it be under the *Stat. Car.* 2. Persons to be removed under that Act are those that remove from Place to Place, but this Man does not come to settle as a Rambler, but in his own Right, and therefore is well settled.

Court: The words of the Act of Parliament are general, yet this is not within the Design of the Act, and it is a good Settlement. Order quash'd by the Court.

The same Term.

The King *against* The Justices of the Town of Salop.

MR. *Parker* shewed Cause against a *Certiorari* to remove Rates and Orders for the Relief of the Poor of *St. Chad's*, in the said Town, and cited the Queen against the Inhabitants of *Marlborough*, 9 *Anne*; and the King against the Inhabitants of *Utoxeter*, *Easter* 5 *Geo.* 2.

Sir *John Strange* would have distinguished the present Case from the Cases cited, because here there was a Rate made by the Parish Officers, and confirmed by two Justices, and then an Appeal against that Rate, and the whole Rate quash'd, and a new one made by the Justices in Sessions; and he said that in the present Case the Parishioners had not an Opportunity of being heard against the Rate made at the Sessions, and that ought to be heard in this Court.

Chief Justice: If Persons be charged in the Rate, who are not chargeable, the Rate against them will be void, and they may maintain Trespass if it be levied; but if it be unequal, the Sessions are the only Judges of that, and this Court cannot examine the Equality of the Rates; but if the Justices have proceeded to make a Rate in Sessions, without hearing the Parties, that is Matter of Complaint against them; but the true Objection against a *Certiorari* is, that if Rates were removable, the Poor might be starved whilst the Rates were depending here, and therefore the Court, from the great Inconvenience that would attend the Removal of the Rates, have refused to do it, and no Instance can be produced that such a *Certiorari* ever stood, and the Rule was discharged.

The same Term.

The King *against* Earle and Burstoe.

MR. *Marsh* excepted to an Appointment of Overseers of *St. John's* under the Castle of *Lewes;* it is said we two of the Justices for the County of *Sussex;* they may be so and not live in the County.

2. That it is not said they lived in or near the Parish.
3. To be new Overseers, which may be a Nullity, for there might be Overseers appointed before.
4. For one whole Year ensuing may be by *Easter* next Year.

Peirce and others against *Brinker*, *Salk.* 474. And a Rule was made to shew Cause.

Anonymus.

MR. *Ager* Senior, moved, That the Defendant, Parson of the Parish, might produce the Church-Wardens Books of Account in his Hands, upon an Affidavit that it was a publick Parish Book.

The Court granted a Rule that Plaintiffs should be at Liberty to inspect any public Books in the Parson's Custody, and take Copies of any part at their own Expence.

Michchaelmas, Eighth of *George* the Second.

The King *against* Easton.

MR. *Yate* took Exceptions to an Indictment against Defendant, for exercising the Trade of a Grocer, not having served seven Years Apprentiship.

1. Not said in what County *Daventry* is in.
2. At a General Sessions, and not Quarter, of the Borough.
3. Not averred to be a Trade at the Time of making the Statute, and not one of the Trades mentioned in the Statute. Shew Cause.

Michaelmas, Seventh of King *George* the Second.

Oakhampton *against* Newton.

A MAN is charged and assessed by Parish Officers to the Land Tax, and pays it for two Years, which was repaid him by his superior Officer, he being a Tide-Waiter, the Sessions adjudge this no Settlement.

Serjeant *Chappel* moved to quash their Order, and said that this amounted to Notice, and that the Party gained a Settlement, *Comb.* 410, 279. 1 *Mod.* 331, and Scavengers only are excepted in the *Stat.* 9 *Geo.* 1. Shew Cause.

Hilary Term following.

The King *against* Griffin.

SOME Differences have arose between the Trustees of the Workhouse, in the Parish of *Lambeth*, and some of the Parishioners there.

13th of *August* 1732, the following Notice was given in Writing, and read in the Church, *viz.*

Whereas the Church-Wardens and Overseers of the Poor, and the Parishioners, have usually met at the Workhouse every *Sunday* in the Afternoon, this is to give Notice that for the Future the said Meetings will be every *Thursday* at four of the Clock in the Afternoon.

William Starkey, *Thomas Griffin*, } Church-Wardens.
Simon Harding, *Willian Banyer*, *Robert Kettle*, } Overseers.

Note; The first Notice was not in Question.

20th *August* 1732. Another Notice in Writing, reciting the former, was given by the Trustees and read in the Church, that the Parishioners were desired to take Notice that the same was ordered without the Authority or Knowledge of the Trustees appointed by Order of

Vestry, for governing and managing the Work-House, who will continue to meet as usual on *Sunday* in the Afternoon.

27th of *August* 1732, the above Persons who signed the first Notice reciting the Notice given by the Trustees, go on as follows; which Notice in Writing was read in the Church, *viz. Now* this is further to inform the Parishioners, that such Notice was only consented to by one Church-Warden, whereas two Church-Wardens and three Overseers ordered such Meeting on every *Thursday*, which they intend to continue, notwithstanding such pretended Authority to contradict, and strictly to adhere thereto, and desire the Parishioners to meet and assist them, in order to correct several Abuses that have, by their pretended Authority, been suffered to be committed, and which will appear plain when any one pleases to examine into the same, which hath been done by the said Church-Wardens, and the Parishioners assisting them in correcting such Abuses. Signed *T. Griffin.*

Upon the last of these Notices an Information was moved for, and granted against the Defendants *Banyer* and *Griffin*, who were found Guilty.

And it was now moved in Arrest of Judgment, that this Notice contained nothing libellous; and Serjeant *Eyre* said, That the Charge was laid too general and uncertain against the Defendants, as intending to reflect upon three Persons particularly named, and the rest of the Trustees; and if it be an Offence done against the Characters of all these Trustees, every one may move for a separate Information, and the Defendant be punished for the same Thing over and over; and it has been held that the Persons ought to be named, and the Offences must not be accumulated, but a single Offence ought to be laid and made certain, and cited *Bro. Abr. tit. Indict. pl.* 21. *Carth.* 226. and *Show* 389, 390.

Mr. Serjeant *Wynne* on the same Side cited the King against *Jelfs*, and 2 *Leon.* 2 *Lev.* 208. as to the Uncertainty, and *Allen* 28. that it is not sufficient to shew a Person in Office, but how he came to be elected;

And said, that a Parish has no Authority to appoint Trustees. *Lane* 21.

The *Stat.* 9 *Geo.* 1. is the only one in Being that gives Authority to erect Workhouses; and it does not appear that this Workhouse was erected by the Assent of the Parish; they ought to have shewn that they were Church-Wardens or Overseers, and that this was done by the major Part of the Parishioners, and that the Poor therein were such as did seek Relief.

Mr. Serjeant *Hayward* on the same Side; they should have said that they were Trustees appointed by Order of Vestry, whereas it is only said that they were chosen by the Parishioners.

Sir *Thomas Abney*, in support of the Judgment, cited the King against *Osborn*, which was an Information for a Libel against the whole Body of the *Jews.*

A Parishioner as such cannot give any Notice in the Church in Time of Divine Service.

There are other Statutes for Work-houses besides the 9 *Geo.* 1. particularly 39 *Eliz. c.* 5.

Mr. *Kettleby:* A Libel is never the less so because it is true.

Mr. *Marsh:* Parishioners cannot give their Consent but in Vestry.

Mr. *Fazakerly* on the same Side: Scandalous Words in an Information are not to be measured as in an Action for Words; the Question is, Whether this Libel does reflect upon any Person's private Character? It being reduced into Writing that the Trustees have been guilty of a Breach of Trust, is a Scandal upon them, abstracted from the Statute 9 *Geo.* 1. for that does not alter the Nature of Things.

As to the Objection, that it appears by the Trustees Notice, to which the last refers, that they were appointed by a Vestry; in the beginning of the Information it is said, they were chosen by the Parishioners, it is only a Mistake in the Notice, and no way inconsistent.

Sir *John Strange:* Formerly in Actions for Words Courts took them in a milder Sense; but that Rule is now exploded, and they construe them as other Persons in common Understanding would.

As to the Objection, that it does not appear that the Persons are the same; Taking the whole together it does.

Mr. Serjeant *Wynne* replied, This was a joint Trust, if any, and different from the Case of a Corporation, or of the Body of the *Jews* or *Quakers*, because they could not be particularly specified.

A Vestry must be upon publick Notice.

Chief Justice: As to the first Question, Whether the Matter of the Paper be libellous or not? that depends upon ths Paper itself; as to the Matter of the Paper, it appears to me to be libellous; the Court cannot take these to be publick Trustees, neither is it averred to be a Work-house upon the Statute 9 *Geo.* 1. but must be erected by a private Charity and Consent; therefore the Question is, Whether the Publication of a Paper which reflects on a Person as a private Person, and in a private Capacity, is not a Libel? and I think it is; because it tends to a Breach of the Peace; even though an Action would not lye for the Words.

In my Apprehension, saying that they have suffered those Abuses to be committed by Virtue of their Authority; when considered, those Words are a Charge; to take off the Force of them it is said the Defendants were Church-Wardens, and proper to do this; but it does not appear they were so; yet still if it had, they ought to keep within due Bounds in their Notice, and not reflect; this was a proper Defence at the Trial. Upon these Reasons Court was of Opinion here was sufficient Matter to make this a Libel.

The next Objection was, that the Persons are not all mentioned, but only three, and the rest of the Trustees; there is no Case that goes so far as to say that all should be mentioned; three are; and that is enough; for it is the Suit of the King and one intire Offence.

As to the Objection, that it does not appear the Parishioners had any Authority to choose them, that is not material; because it is a private Charity.

As to the last Objection, the Notice was concerning these very Persons, and there is no Inconsistency in this.

And the whole Court agreed, and gave Judgment for the King.

Trinity, Ninth of King *George*.

The King *against* Gibbs.

THE Defendant was indicted for selling Beer, and the Indictment set forth, that he sold several Quantities of Beer to divers Persons by False Measure; and it was moved to be quash'd for the Uncertainty of it, and said, The Court cannot give Judgment in this Case, for *they* must ascertain and proportion theirJudgment in adapting the Punishment suitable to the greater or less Quantity that is sold; and in as much as the Quantity is not ascertained, which may direct the Punishment, the Indictment is erroneous, and should be quash'd; for how is it possible in the Nature of the Thing to make a Defence under so general a Charge? in *Cro. Car.* 381. a Man was indicted for engrossing a great Quantity of Hay and Straw, and adjudged wrong for the Uncertainty of it.

By the Court: Judgment must be arrested, because the Charge is too general for the Court to inflict the Punishment by; which should be proportion'd to the Crime.

The same Term.

The King *against* Ford.

TWO Convictions against Defendant on the *Stat.* 3 *Car.* 1. *c.* 3 and 4. for selling Ale without a Licence, and being removed by *Certiorari*, Mr. *Fortescue* took three Exceptions.

1. It does not appear, on the Face of the Conviction, that the Party was not licensed; there are two Sorts of Justices of the Peace, *viz.* Justices of the Peace only; and Justices of the Peace, and of *Oyer* and *Terminer*. Now the Conviction recites, That the Defendant was not licensed by the Justices of Peace; then if the express Words of *Oyer* and *Terminer* are not in their Commission, they are no other than simple Justices of the Peace. *Hale's Pl. Cor.* 165. *Crompt. Just.* 161. *b.* §, 5. To this the Chief Justice answered; If no other Matter had appeared but that he had *no Licence* from two Justices of the Peace, and of *Oyer* and *Terminer*, the Objection would be of some Weight; but there is a positive Allegation, that he sold Ale (without any Licence whatsoever).

2. It is not set forth that the Defendant was not convicted upon the Statute 5 and 6 *Ed.* 6. *c.* 25. And if he was, the *Stat.* 3 *Car.* 1. is express, that he shall not be convicted on that Statute, *viz.* 3 *Car.* therefore such Matter ought to be set forth in the Conviction.

Chief Justice: We cannot intend any former Conviction; for if the Case had been so, the Defendant should have informed the Justices that he had been convicted already; which was a Circumstance which lay in his own Knowledge, and having averred it against the Statute of *Car.* 1. the Act of *Ed* 6. is quite out of the Case.

3. The second Conviction recites the first, as that on which it is grounded. The first Conviction runs in the Present Tense, and the Recital of the first in the second Conviction is in the Preterperfect Tense. Now the first Record ought to be set forth *literatim*, and in civil Actions the constant Course is to recite the Record in the very Words.

Chief Justice: The Recital in the Preterperfect Tense is well enough, as well in this Case as in Civil Actions, and over-ruled the Exceptions.

Michaelmas, Eleventh of *George.*

The King *against* Hawkins.

AN Order of Sessions to suppress an Alehouse kept by the Defendant *Hawkins;* two Exceptions taken to the Order.

1. Not said in the Order that this was a Common Alehouse, but only a lewd and disorderly Alehouse; and the Words of the *Stat.* 7. *Ja.* 1. speak only of Common Alehouses. The Court over-ruled this Exception.

2. Not said in the Body of the Order in what County the Alehouse was; the County was mentioned in the Margin; but it was insisted that was not sufficient; for it ought to be mentioned in the Body to shew the Justices have a Jurisdiction.

By the Court: This is a good Exception, and the Order must be quashed; it is a Common Exception, and always allowed; and the same Exception has been allowed in Orders for removing the Poor; so held in the Case of the King against the Inhabitants of *Worthenbury* in *Wilts*, *Hil.* 10 *George*, in the King's Bench, which was an Order for Settlement of the Poor, 2 *Keb.* 302. the King against *Yarrington*, 303. the King against *Butler.*

Easter, Eleventh of *George.*

The King *against* Venables.

DEFENDANT was convicted on 5 and 6 *Ed.* 6. *c.* 4. for keeping a disorderly Alehouse, and upon his Conviction the Justices made an Order for suppressing his Licence; yet notwithstanding this Conviction and the Order, Defendant went on in the Sale of Ale. Upon this the Justices made an Order for his Commitment to the County Gaol, and ordered him to give Security that he would not sell Ale for the Time to come. The Conviction and Order being removed into the King's Bench, Mr. *Reeve* took Exception to the Order of Commitment, because it did not appear by the Conviction and Commitment that the Defendant was summoned before the Justices, and it is possible he might have gained another Licence after the first was suppressed; therefore it should have appeared in the Order he was summoned to answer for himself; he admitted it did not appear by the Commitment he was not summoned; but that is not sufficient, as was resolved in the Case of the Queen against *Dyer*, *Salk.* 181. for it was there held, that in these summary Proceedings a Summons was necessary; and it ought to appear there was a sufficient Summons; and in that Case the Summons being laid to be upon an impossible Day, it was held as no Summons, and the Conviction was quash'd. So in the Case of the Queen against *Green*, *Hil.* 12 *Anne*, the Conviction was quash'd for want of setting out the Summons in a particular Manner; and there it was carried so far that the general Allegation *of being duly summoned* was held not sufficient. See Doctor *Bently's* Case relating to the Summons, *Hil.* 9 *George.*

Mr. Serjeant *Carter* on the other Side: This Conviction is right, for the Justices having a Jurisdiction by Act of Parliament, the Court will never intend they have exceeded their Jurisdiction, or acted irregularly, unless it appear to the Court upon the Face of the Conviction. The Case of the Queen against *Dyer*, *Salk.* 181, is very different from this, for that

Conviction recited that Defendant had been summoned to appear upon *Tuesday* 17th of *April* 1702, whereas there was no such Day, for the 17th of that Month in that Year was a *Friday;* so that it appeared on the Face of the Conviction that the Time of the Summons was impossible, and therefore they could not intend a Summons at any other Time. He cited the King against *Whitlock* 1719. The King against *Hawkins*, 1720. The King against *Cleg*, *Mich.* 1721. The King against *Harris*, *Mich.* 1722. In these Cases the same Exception was taken, and over-ruled; and in the Case of *Quinges* against *King*, it was held not necessary to set out a Summons, for the Court will intend one, and the general Allegation of having *proceeded duly* is sufficient. In 1 *Vent.* 175, Exception to the Discharge of an Apprentice was, that it did not appear there was Notice; but that Point was waved; for being in a judicial Proceeding, it shall be intended.

Lord Chief Justice *Raymond:* This Conviction is well taken; where no Summons at all is set forth in these Convictions, the Court will intend one; but where a Summons is set out, and that Summons appears to be irregular, then there is no Room for the Court to intend any other Summons; as it was in the Case of the Queen against *Dyer.* There can be no Inconvenience in this; for if in Fact the Justices have proceeded without summoning the Party; the Court will give the Party a Remedy by Information.

Mr. Justice *Fortescue:* The Question is only on the Form of the Order; I have often known this Objection made; but it never prevail'd, for where the Justices have a Jurisdiction, all necessary Incidents will be presumed to support that Authority, unless the contrary appears. I think the Conviction good without Dispute.

Mr. Justice *Powis* agreed.

Mr. Justice *Reynolds:* The Question is, Whether a Summons is necessary or not? undoubtedly it is; but the only Doubt is, Whether it should appear, upon the Conviction, that there was a Summons? thought it a settled Point, that it is not necessary it should appear, and agreed the Conviction to be good. Where a defective Summons appears, it destroys the Intendment that there was a regular Summons; which is like the Case of an Original; where the Statute of *Jeofails* supplies the want of one; but does not help a defective Original.

Michaelmas, Twelfth of *George.*

Anonymus.

HELD that where an Appeal is lodged before the Sessions, and there be no Proceeding upon it; and the Sessions is not adjourned; the Appeal is intirely lost; and the Court of King's Bench cannot grant a *Mandamus* to the Justices of Sessions to proceed thereon.

Easter, First of *George* the Second.

The King *against* Cawood.

TWO Justices made an Order to remove a Person out of the liberty of *Cawood* to the Liberty of St. *Peter*, both within the West-Riding of *Yorkshire;* an Appeal was made from this Order; and being removed by *Certiorari*, an Exception was taken that the Appeal from this Order was to the Quarter-Sessions of the Riding; when it ought to be to the Sessions of the Liberty.

Mr. *Reeve* on the other Side: The Statute 8 and 9 *W.* 3. *ca.* 3. § 6. has altered the Law in this Point, and directed the Appeal shall be made to the Justices of the Riding in these Words, "The Appeal against an Order for the Removal of any Poor Person from out of any Parish, Township or Place, shall be had, prosecuted and determined at the General or Quarter-Sessions of the Peace for the *County Divison or Riding*, wherein the Parish, Township or Place (from whence such poor Person shall be removed) doth lie, and not elsewhere." And upon a Rule to shew Cause, the Court held the Appeal may be made only to the Sessions of the Riding.

Second Exception; In the Caption it is said, Be it remembered that at the General

Quarter-Sessions of the Peace held as by Adjournment. Now it is not sufficient to set down the Sessions were held such a Day by Adjournment, unless shewn when the Sessions legally commenced. But this Exception was not allowed, and therefore the Appeal confirmed.

Michaelmas, Thirteenth of *George*.

The King *against* Tennant.

MOVED to quash an Order of Bastardy made by two Justices, to charge the Defendant with keeping a Bastard Child, begotten on the Body of a Feme Covert, during the Absence of her Husband, upon Evidence of a Certificate of a Captain in the Army, that the Husband was at that time in *Ireland*, and the concurring Evidence of the Woman's confession that the Defendant was the Father of the Bastard. The Case was this; Defendant appealed from this Order to the Sessions, and upon Debate the Sessions set aside the Order of two Justices, and nothwithstanding that, the same two Justices made a second Order upon the very Grounds of the first, which had been discharged before by the Sessions. It was insisted that this last Order was void, for according to the Case in *Vent.* 59. if an Order of two Justices, for keeping a Bastard, be revoked by Appeal at the Sessions, that the Person is absolutely discharg'd; and the Justices had no Authority to make a new Order.

Mr. *Fazakerly* in answer said, If Sessions discharg'd an Order for Form, a new one might be made; and *this Court* would intend that the Sessions had discharg'd it for Form; for it appears ill founded and to want Form.

Court: Nothing of that kind can be intended, for the Order of Sessions recites, that the Order was made on full Hearing, and therefore the Merits must have been before them, and the Discharge of the Sessions upon Appeal is conclusive against all the World; and the Defendant being in Court was discharged.

Easter, Second of *George* the Second.

The King *against* The Inhabitants of Turley.

MOVED to quash an Order of Sessions, upon this Exception, because the Order of Removal made by two Justices was made the 21st *June*, and the Appeal was not made to the next General Quarter-Sessions, which was at *Midsummer* following the Date of the Order, as required by the 43d *Eliz.* But was deferr'd to *Michaelmas* Sessions. *Salk.* 480, 482. *Carth.* 455.

Mr. *Parker* in Answer quoted the Case of the Parish of *Milbrook*, against *St. John's Northampton*, *Mich.* 1 *George*, an Order of two Justices was made before the Sessions at *Easter*, and the Appeal from that Order not till *Midsummer* Sessions; yet held a good Appeal; because Notice of the Order might not be given before the next Sessions.

Chief Justice: How can we know Notice was not given till after the Sessions next ensuing the making of the first Order?

Mr. *Parker* answered; They should have objected the want of Notice at the Sessions when the Appeal was made, and then it would appear specially stated on the Order. The Court affirmed the Order of Sessions. See *Brown's* Case in *Com.* 448.

Trinity, Ninth of *George* the First.

St. Olave's Southwark *against* Allhallows.

A BOUND Apprentice in one Parish, and by Agreement served in another, and by an Order of Justices of Peace, his Settlement was adjudged to be in the last Parish. This Order was removed, and moved to quash, for these Reasons:

First, the *Stat.* 3 and 4 *W.* and *M. c.* 11. restrains the Privilege of gaining a Settlement to the being actually bound an Apprentice, and in the last Parish there was no Binding, consequently no Settlement could be gained there. By a bare Agreement the Apprentice could

not be turned over, so as to gain a Settlement in the last Parish; for by the Custom of *London*, the Turning over must be before the Chamberlain of *London*, or otherwise not binding, and the bare verbal Agreement between the Master and Apprentice, is not sufficient within the Statute 2 *Salk.* 479. and the Act must intend a Service with the Person only to whom the Apprentice was bound.

By the Court: The Settlement in the latter Place is good; if a Master assigns over his Apprentice, and the Apprentice serves in pursuance of that Assignment, he thereby gains a Settlement; and the Apprentice in the present Case, whilst he is with his second Master, is in Effect serving the first; for he serves in pursuance of the first Contract, and it is a Continuance of his Apprenticeship.

Mr. Justice *Eyre:* An Apprentice's Settlement is where the Apprenticeship expires; and it differs not whether he serves with one Master or another, for still he serves by Virtue of the first Indenture.

Mr. Justice *Fortescue:* The Settlement in the latter Place is well gained, not as an Apprentice, but as a Servant to the second Master.

The same Term.

The King *against* Reed.

THE Defendant was indicted at the Quarter-Sessions, upon the Statute of the 12th of Queen *Anne* for Usury; and it was moved that this Indictment might be quashed; because this was an Offence of which the Justices of the Peace had not a Jurisdiction; and to this Purpose was cited the Case of the Queen against *Smith*, *Salk.* 680. and the Indictment was quashed by the Court.

Trinity, Sixteenth of *George* the Second.

The King *against* Wood.

INDICTMENT against the Defendant, a Miller, for changing Corn delivered to him to be ground, and giving bad Corn instead of it. It was moved to quash it, because only a private Cheat, and not of a publick Nature. It was answered, That being a Cheat in the way of Trade, it concerned the Publick, and therefore was indictable.

The King against *Marsh*, 2 *Keb. Trinity*, 21st of King *Charles.*

But the Court unanimously agreed not to quash the Indictment.

Easter, Tenth of *George* the First.

The King *against* Puckington.

A. WAS bound Apprentice and served as such two Years; his Master afterwards becoming Bankrupt, he hired himself as a Servant to another, during that Apprenticeship, and lived with his second Master till his Apprenticeship expired, and then his first Master gave him up his Indenture; and the Question was, Whether *A.* gain'd a Settlement in the Parish where he lived with his second Master; or whether his Right of Settlement continued in the Parish where he lived as an Apprentice with his first Master. And it was ruled by the Court, that *A.* being under an Indenture of Apprenticeship, and having gained a Settlement by that, cannot gain another Settlement by hiring himself to another whilst the first Covenant subsists; for he was not *sui Juris* when he made the second Contract.

Hilary, Tenth of *George* the First.

Anonymus.

A. WAS bound an Apprentice to a Cooper for seven Years; but for the Space of six Years of his Apprenticeship he lived with his Father at a small Distance from the Habitation of his Master. The Order of Removal sets forth, that he came to live with his said Master

in the seventh Year, and continued to stay with his said Master for three Quarters of a Year together; and the Question was,

If *A.* was settled at the Place where his Master lived or not?

By the Court: This is a good Settlement at the Master's Place of Abode; and the Law will intend he continued without Intermission all the Time where his Master inhabited; and the Order of Justices which removed him to the Place of his Father's Settlement was quash'd.

Trinity, Sixteenth of *George* the Second.

Rhode in Somersetshire *against* North Bradley in Wiltshire.

ORDER of two Justices made the 20th of *November*, which was confirmed by the Justices at *Christmas* Sessions, without any Appeal, upon Application of that Parish which obtained it. At *Easter* Sessions, upon Appeal, they quash the Order of Confirmation, and also the Order of two Justices.

Objection; That a Sessions intervening between the Order of Appeal and the making the original Order, they ought to have shewn in their Order, that there was no Notice of the Order of two Justices before *Christmas* Sessions; for if there was Notice, the Sessions at *Easter* had no Jurisdiction.

The Court held that they need not set out no Notice, and cited *Milbrook* against *St. John's* in *Michaelmas* Term, in the first Year of King *George* the first.

It was agreed that the Order of Confirmation was void for want of Appeal; but then the Question was, Whether the Justices at *Easter* Sessions had any Jurisdiction over that Order, or whether it ought not to have been quashed in this Court?

As they might have Jurisdiction, because if not served till after *Christmas* Sessions, it will be good, we will not intend Notice against their Jurisdiction.

Chief Justice cited *Comb.* 448, in Support of the Objection, that Notice of the Order of two Justices should appear in the Sessions Order; but the Case of *St. John* against *Milbrook* is contrary, and so was adjudged in the Case of the King against the Inhabitants of *Turley*, *Easter* Term, in the second of his present Majesty.

If Appeal was not at the next Sessions, that should be taken Advantage of at the Sessions, and it need not appear in the Order of Sessions. It was further said, That the Order of Confirmation ought to have been set aside before the Appeal; but we think not, because the Parties to the Appeal are no Parties to that Order, and perhaps had no Notice of it; and therefore the Appeal proper for that Order, as to the Appellant, void. Order of Sessions confirmed as to that Part quashing the Order of two Justices, but not as to that Part quashing the Order of Confirmation; and as to that being now before the Court, we will quash it, as being made without Jurisdiction, there being no Appeal against that Order.

Trinity, Twelfth and Thirteenth of *George* the First.

The King *against* Davys.

MR. *Reeve* moved to quash an Order of Sessions made at the Sessions at *Bristol*, for the discharging an Apprentice from his Master. The Order set forth, that upon the Complaint of one *Fide*, of the Hardships and ill Usage he received from his Master, the Court had examined into the Causes and Grounds of this Complaint, summoned the Master, and had heard him in his Defence; and that it appeared to them the Master had beat his Servant very much without just Cause, and turned him out of Doors, therefore they order the Master *shall return* 20*l. Part* of the Money he received with his Apprentice, and the Apprentice be discharg'd from the Service of his said Master.

Exception was taken to this Order; That it did not appear by the Order there was any Reason for his being discharg'd; for the only Reason given in the Order was, That the Apprentice having made a Complaint against his Master for ill Usage, the Master declared in open Court he would not take him again into his Service. It was agreed by the Court, that

the Cause of Discharge *ought to appear in the Order*, that this Court might judge whether it was sufficient Cause or not.

And Mr. Justice *Fortescue* said, That the Justices, in Cases of this kind, are obliged to shew a sufficient Cause and Reason for the Discharge they make, and said he remembered a Case where an Order was made to discharge an Apprentice because he had the *King's Evil*; and this was held to be no sufficient Cause for his Discharge; because it was the Act of God. By 5 *Eliz. ch.* 4. it is enacted, that a Discharge of an Apprentice must be under the Hands and Seals of four Justices of the Peace, (*Quorum unus*) but here none of the Justices appear to be of the *Quorum*.

But by the Court it appears there were but five Justices at the Sessions, and unless two were of the *Quorum* they could not hold a Sessions. The Counsel replied, That an Order could not be made good by *Implication*. It was argued in Support of the Order, that that Statute gives *Mayors* of Cities and Boroughs a Power to discharge Apprentices; but does not require them to be of the *Quorum*. But it was answered, That this Order appeared not to be made by the *Mayor*, but made at the Sessions.

By the Court: Quash the Order, and agreed it to be a Point not now to be disputed, that the Sessions has an Original Jurisdiction to discharge Apprentices. *Salk.* 67, 68, 491.

Michaelmas, First of *George* the Second.

Smith *against* Birch.

AN Action was brought against the Defendant for enticing away and detaining the Plaintiff's Apprentice, who had agreed by Writing to serve the Plaintiff for seven Years. Upon Evidence it appeared, that the Stile of the Writing began, *This Indenture*, etc. But in Fact the Parchment was not indented, but was a Deed Poll.

Mr. Serjeant *Corbet* took an Exception to the Deed, and insisted that the young Man was not an Apprentice, because he was not bound by Indenture. An Infant can be bound no other way than as the Statute directs, 5 *Eliz. ch.* 4. which directs *the Binding to be by Indenture*, and nothing can make this good. The Deed cannot now be indented, for that would be a Forgery; and by making it so it might be an Estoppel; therefore unless the Plaintiff shews the Apprentice to be of full Age at the Time of signing such Deed, he cannot be accounted his Apprentice; and by Consequence no Action can lye against the Defendant for detaining the Apprentice, neither can the Plaintiff prove him to be his Servant by this Deed. For he has declar'd for an Apprentice, and must prove him so to be, therefore the Plaintiff was nonsuited.

Michaelmas, Twelfth of *George*.

The King *against* Collingbourn.

ORDER made at *Hicks's Hall* for discharging an Apprentice to a Freeman of the City of *London*, the Master living in *Middlesex* where the Apprentice was bound. The Order being removed into this Court by *Certiorari*, three Exceptions were taken.

1. That the Apprentice was bound and inroll'd in *London*.
2. He was bound by the Justices.
3. The Trade of a Glazier not within the Statute.

To these Exceptions it was answered, That the Clause of 5 *Eliz. ch.* 4. §. 35. enacts, That if any Master should misuse his Apprentice, and he repair unto one Justice of the Peace for the County in which the Master resides, etc. and §. 40. provides that the Customs of *London* and *Norwich* should be saved; §. 35. has ever received a large Construction in favour of the Jurisdiction of Justices; for though upon the Master's Complaint no Power is given to the Justices to discharge; yet in 1 *Saund.* 314. *Hawksworth* against *Hillary*, held that it is reasonable, and within the Intent of the Statute, that an Apprentice should be discharged from an ill Master, as well as a Master discharg'd of a wicked Apprentice. The same Point is resolved in 1 *Mod.* 315. *Wilkin* against *Edwards*, and 1 *Vent.* 174, *Watkins* against *Edwards*.

The first and principal Question is, Whether the Court at *Hicks's Hall* has any Jurisdiction to discharge an Apprentice bound to a Freeman of *London*, or whether he is not to be discharg'd by the Customary Petition in the Mayor's Court? It is found that the Apprentice lived with his Master out of the City of *London*, and within the Jurisdiction of the Justices of *Middlesex*. To this Exception it was answer'd, That the Statute does not regard where the Binding is, or Inrolling, but expressly gives the Jurisdiction to the Justices of Peace where the Master lives; and if this did not belong to the Justices of *Middlesex* where the Master lives, there would be a Failure of Justice, for neither the Chamberlain, nor any other City Magistrate, has a Power to compel the Master's Appearance before them.

2. As to the second Exception; It was said that it was not material at what Place the Apprentice was bound, for the same Reason.

3. To the third Exception it was said, That formerly indeed it was a Doubt whether the Statute did extend to all Trades; but of late it had been settled and agreed that it does, in *Salk.* 471. The Court there upon second Thoughts resolved, That the Power of discharging reaches only to the Trades mentioned in the Statute, *Palm.* 528. though *Hale* C. J. was of Opinion the Statute extended to all Trades, 2 *Keb.* 822. The King against *Taunton*, *Hil.* 6. *Geo.* the Court affirmed the Order of Discharge, and said they would not take away the Jurisdiction of the Mayor's Court, but only give a concurrent Jurisdiction to the Justices of the County. It would be very inconvenient to have Apprentices to Freemen of *London*, who are bound there, and who live in distant Counties perhaps, obliged to come to the Mayor's Court to sue a Discharge against the Master. The Words of the Statute are very plain, for they give the Jurisdiction to the Justices where the Apprentice lives.

Trinity, Twelfth of *George.*

Ruardean *against* Whitechurch.

ONE *Charles Knight* was bound an Apprentice to a Gentleman for seven Years, and served him three Quarters of a Year as his Huntsman, and wore a Livery; after which he ran away from his said Service, and gained no Settlement since; and it was adjudged that he was settled at the Place where he was so bound an Apprentice.

N. B. The Sessions had adjudged that he had gained no Settlement by his Service; and set forth in their Order, that no Indenture was produced of his being an Apprentice, upon which they chiefly grounded their Judgment. But the Court held, that if an Order set forth that such a one was bound an Apprentice, it is sufficient without saying he was bound by Indenture; though the Statute says positively that it shall be by Indenture.

Michaelmas, Thirteenth of *George.*

The King *against* Smith.

MR. *Fazakerly* moved to quash an Indictment for taking an Apprentice for a less Term than seven Years, upon two Exceptions.

1. Not appear in the Indictment that the Defendant exercised any Trade, Occupation or manual Employment.

2. Not set forth that the Apprentice was not the Son of a Farmer.

Rule to shew Cause, and the last Day of Term, Indictment was quashed by Consent.

The same Term.

The King *against* Wately.

THE Justices in Sessions made two Orders on the Master, one to discharge the Apprentice bound to the Trade of a Cutler, and the other to compel the Master to repay part of the Money received with the Apprentice to his Father; these Orders being removed into the King's Bench by *Certiorari*, and Mr. Serjeant *Chappel* moved to quash them upon this Exception; because in the first Order the Trade of a Cutler is mentioned to be the Trade of the

Master, and that is not one of the Trades enumerated in the Statute 5 *Eliz. ch.* 4. and therefore the Sessions had no Jurisdiction to intermeddle in the Affair, and cited *Salk.* 471, 3 *Salk.* 41. *Puntin's* Case, who was bound to a Tallow-Chandler, and by Order was discharg'd from his Apprenticeship. Rule to shew Cause.

Anonymus.

A. WAS put Apprentice to *B.* to serve him for Seven Years (*B.* not having himself served legally to that Trade); afterwards *A.* being out of his Time used the same Trade, and an Action on the Statute being brought against him for not serving his Time with one that had legally served seven Years;

Resolved, it was a good Service in *A.* and that he shall not be liable to any Suit or Trouble thereupon.

Easter, Second of *George* the Second.

Aynsworth *against* Wood.

Before Lord Raymond *at* Guildhall.

THE Plaintiff brought a special Action on the Case, in which he declared that *A. B.* being bound an Apprentice to the Plaintiff to serve for seven Years, departed from his Service, and that Defendant knowing him to be the Plaintiff's Apprentice, retained him in his Service, and absolutely refused to deliver back the Apprentice; and from such a Day to the Day of filing the Original, the said Defendant kept and detained the said *A. B.* in his Service, to his Damage one hundred Pounds. To support this Declaration, the Indenture of Apprenticeship was given in Evidence, that the Boy served two Years, and at the Sollicitation of his Mother left his Master's Service to go and stay at a Kinsman's House; *that the Defendant sent him thither Tools and Brass, and Copper to work with*, which when finished were carried by the Mother to the Defendant, who sent him back Money for the Work; but that he never saw Defendant at his Kinsman's where all the Work was done; *and the Boy own'd his Mother and a third Person told him the Defendant had sent him those Things to work.* The Defendant's Counsel objected, That this Evidence did not support the Declaration; because Defendant never saw or had any discourse with the Apprentice.

And the Chief Justice said, The material Point in this Case turns upon the Words in the Declaration, *detained and kept;* the Declaration is good, but the Evidence does not prove it. If an Apprentice works for another Person who receives the Money arising from such Work, the Master may maintain an Action for the Money. See *Fawcet* against *Beavers* and *ux'*, 2 *Lev.* No Man can properly be said to detain and keep another's Servant whom he never saw or spoke with. And the *Plaintiff was nonsuit.*

N. B. In an Action on the Case for retaining of his Servant, whereby he lost his Service, the Plaintiff ought to prove that the Defendant knew that he was his Servant. *Trials per Pais* 365.

Trinity, Tenth of *George* the First.

The King *against* Godfrey.

AN Order was made upon the 18th *Eliz. ca.* 3. by two Justices, in Relation to the Father of a Bastard child. Exception taken to the Order was, That it did not set forth in what Parish or County the Child was born. On the other Side it was insisted that the Order was good; for in the recital Part, which were the Words of the Church-Wardens, it appeared the Child was born in the County and Parish where it was supposed; and though it did not appear in the Adjudication part of the Order, which were the Words of the Justices; yet it would be necessarily implied that the Child was born within the same Parish and County; and where a Thing is necessarily understood, it is the same as if it had been express'd. 1 *Vent.* 336. 3 *Cro.* 763.

It was said that this is an old Objection, and was allowed in the case of the Queen against

Biddington, Easter 10 *Anne*, the King against *Blackwell, Mich.* 1717. and the Order was quashed by the Court.

Mr. Justice *Fortescue:* Orders must not be made good *by Implication*, and if it does not appear that the Child was born in the County, the Justices have no Jurisdiction, unless it appears to be born in the Parish; for this is an order to indemnify the Parish; and it ought first to appear the Parish is aggrieved before such an Order can be made.

Hilary, Eighth of *George.*

The King *against* England.

EXCEPTION to an Order of Bastardy, because not said whether Male or Female; but only alledges it lately born. Shew Cause.

Michaelmas, Twelfth of *George.*

The King *against* Bryan.

MR. *Gapper* moved to discharge Defendant brought up by *Habeas Corpus*, and upon the Return of the Writ it appeared that one *Anne Bryan*, single Woman, was committed by Order of one Justice of the Peace, for bearing a Male Bastard Child, which Child was likely to become chargeable to the Parish where born; for Statute 18 *Eliz. ca.* 3. gives a Power to two Justices, *Quorum unus*, to commit and punish Women having Bastards, where the Mother or reputed Father cannot indemnify the Parish; but this Commitment is irregular, being made by one Justice who alone had no Power.

Mr. Justice *Fortescue* said he did not see what Defendant would get by being discharged, for she would be recommitted by a new Order for this Offence.

But by the Court: The Commitment now before us is illegal and void; and she was discharged.

Michaelmas, Thirteenth of *George.*

The King *against* Greg.

A MOTION was made to quash an Order of Bastardy, by which Defendant was ordered to pay two Shillings Weekly to the Parish, until the Child become two Years old, and so long as it shall be chargeable to the Parish of *North-Shields.*

By the Court: An Order to pay Money *until* such a Time, is bad. The King against *Brown, Salk.* 480. 2. The Order injoins Defendant to give Security to perform the Order of Justices; this was thought bad, for the Justices have no Power to make such an Order. 3. Here does not appear to have been any Summons; it was answered, That had been held not necessary to be set out; for the Court will intend it. The Defendant is also to pay *four pounds in gross* in three Months Time, which the Court said might well be, 1 *Vent.* 336. and afterwards the Rule was made absolute to quash the Order.

Michaelmas, First of *George* the Second.

The King *against* Street.

AN Exception was taken to an Order of Bastardy, which ordered the putative Father to pay so much a Week until the Child was of the Age of Nine Years, without saying if the Child continues so long chargeable, and therefore the Order is wrong.

Mr. Serjeant *Hussey* in Answer said, Queen against *Smith, Easter* 11 *Anne*, an Order to pay so much a Week till the Child was eight Years old, this Exception was taken then and over-ruled; Queen against *Higden, Mich.* 9 *Anne*, an Order to pay, etc. till nine Years old; held good; King against *Stone, Hil.* 2 *Geo.* 1. to pay till twelve Years old, and Order affirmed. So King against *Miles, Michaelmas* 1 *Geo.* 1. These Cases are grounded upon these Reasons, That the Court cannot presume a Bastard Child can have any Provision made for it, or to be

able to procure itself a Maintenance under that Age. And the Court now agreed these Cases to be in Point to the present Case.

Mr. Serjeant *Gapper*, who made the Objection, cited 1 *Salk.* 121. an Order to pay so much till the Child was fourteen Years old, held naught, 1 *Vent.* 46. an Order to pay, etc. till twelve Years old held insufficient.

Chief Justice: The late Resolutions have held these Orders thus drawn to be good, and the Court affirmed the Order.

Trinity, First of *George* the Second.

The King *against* The Inhabitants of Arundell.

TWO Justices make an Order that Defendant should pay a *Sum in Gross*, and also two Shillings *per* Week so long as the Child should be chargeable; the Party appeals to the Sessions who confirm the first Order; at a Subsequent Sessions the Father of the Bastard desired to have the Keeping of the Child, and that the Payment of the two Shillings *per* Week should Cease, which the second Sessions Ordered. Motion was made to quash this last Order of Sessions, because in this Case they had no Jurisdiction. If an Order of Bastardy be made by two Justices, then an Appeal lies to the Sessions; but where an original Order is made at the Sessions, there can be no Appeal to another Sessions, which deprives the Party of a Means to examine the first Judgment. Now the *Court held*, that second Sessions had no Authority to order the Substraction of the two Shillings a Week, for it was no Security to the Parish; indeed this Order was quashed; because it was made out of Time three Years after Appeal, therefore Justices had no Jurisdiction.

The same Term.

The King *against* Marlborough.

EXCEPTIONS taken to an Order of Bastardy, which set out, That whereas a Male Bastard Child is begot on the Body of *Sarah*, the Wife of *R. Kenn*, and whereas it appears to us that *Stephen Brown* has had *Carnal Knowledge* of her Body, therefore we adjudge the said *Stephen Brown* the putative Father of the said Bastard Child. 1. The Mother of this Child appears to be a married Woman. 2. The Reasons given by the Justices of their Adjudication are bad, for *Brown* might have *carnal Knowledge*, and yet not be the Father of the Child; for since it is not said in the Order when he had that *Carnal Knowledge* of her Body, it might have been seven Years ago. To this it was answer'd, that the Justices have specially stated in their Order, that the Woman's Husband *R. Kenn* had not been heard of for six Years last past; it shall be presumed, that he had used her Body lately.

Mr. *Reeve* replied, That it was an insufficient Answer, unless it had appeared in the Order, that they never met or convers'd together all that Time, *Salk.* 483. or that the Husband was not *infra quatuor Maria* all that Time; for if he had been *infra quatuor Maria*, the Law would intend a Communication between the Husband and Wife, and then the Order must have drop'd; but that does not appear in the present Case, and therefore the Order will stand.

Chief Justice: The Court have given all the Reasons they could give in this Case, nor can we intend they had any more to give.

Mr. Justice *Page:* An Order must appear to be good at all Events, but this is a bad Order, because no where said that the Husband and Wife did not come together all that time.

Mr. Justice *Reynolds:* The Order is wrong, because it does not appear that *Proof was made on Oath* that *Brown* is the Father of the Child; but only that *it appears* that he had *Carnal Knowledge* of her Body; but it does not appear when that was.

Mr. Justice *Probyn:* If the Reasons given by the Justices do not support their Order, the Order must fall; the usual way is to ground their Order on the Oath of the Woman, the Mother of the Child, and said he should think the Order would have been good, if it had

been said, that upon Consideration of the Premisses, proved upon *Oath* before us, we therefore adjudge him to be the Father. Then it was moved that *Brown* should be bound over to appear at the Sessions of the *Borough;* but it was answered and agreed, that by the Statute 18 *Eliz.* he must be bound over to appear at the Sessions of the County. Order quash'd by the Court.

'Bastardy shall be try'd *per pais*, and not by the Ordinary, in an Action on the Case. *Hob.* 179.

Michaelmas, Third of *George* the Second.

The King *against* Buckle.

A MOTION was made to quash an Order of Bastardy on the following Exceptions.

1. The Justices order the Defendant to pay two Shillings a Week to the Church-Wardens till the Child comes to the Age of twelve Years; this is wrong, for the Child may have an Estate left to it; or otherwise be able to provide for itself before that time; and then can be no Charge to the Parish.

By the Court: the Order is bad as to that Exception.

2. The Justices have ordered Defendant *to give Security* to indemnify the Parish, which they have no Authority to do.

3. Complaint to the Justices not made by the Parish where the Child was born.

4. They have ordered Defendant to pay *four Pounds in Gross*, when the Child comes to the Age of twelve Years; but if the Child happens not to be chargeable, then this Order will not bind.

5. Sessions has ordered an Attachment against Defendant for not complying with the Order of two Justices; which is absolutely irregular.

Mr. *Yeates* on the other Side: If an Order of Two Justices is void for Part, and against Law; yet the Court will Confirm that Part which is good. 1 *Syd.* 150. The Justices are to take Notice of the Complaint, and the Statute 18 *Eliz. ch.* 3 §. 2. "gives Power to two Justices of the Peace, *Quorum unus*, to commit the Party offending against the Order to the Common Gaol, there to remain without Bail or Mainprize, except he, she, or they shall put in sufficient Surety to perform the said Order, or else personally to appear at the next General Quarter-Sessions, to abide such Order (if any) as shall be made, etc." This seems to justify the taking Security to indemnify the Parish; and in the case of the Queen against *Weston*, *Trin.* 4 *Anne*, *Salk.* 122. Chief Justice *Holt* said, That if the *Sessions* proceeded on the 18th of *Eliz.* they have no Power to commit, but to proceed on the Recognizance. But if on 3 *Car.* 1. *ch.* 4. §. 15. the Sessions may commit, as the two Justices might have done, that is, unless the Party put in Security to perform the Order, or to appear at the next Sessions; as to that Part of the Order which requires the Defendant to pay Money till the Child comes to such an Age; the Cases of the Queen against *Smith*, *Easter* the eleventh of *Anne*, the King against *Street*, *Mich.* 1 *Geo.* 2. and the late Resolutions have adjudged Orders made in this Manner to be good. The King against *Stone. Hil.* 2 *Geo.* 1. The King against *Miles*, *Mich.* 1 *Geo.* 1. As to the Exception, that the Sessions have not a Jurisdiction to award an Attachment for not complying with the Order of two Justices; in the second Part of *Hawkins's Pleas of the Crown*, Title *Attachment*, it is said all Courts of Record may commit; therefore the Sessions may. The Justices have a Power to order the payment of a *Sum in Gross*, during a certain Time. *Slater's* Case, *Cro. Car.* 1 *Vent.* 336.

And by the Court: The Justices have a Power to order the Payment of a Sum certain, and there need be no Complaint in the Case of Bastardy; nor can it be supposed in Reason, that a Bastard who is *filius Populi*, and Heir to no one, can get a Livelihood before twelve Years old, or have any Friends to provide for it.

Sir *John Strange:* The Justices have no Power to order Defendant to give Security in the first Instance, as is done in this Case, until there be a Breach of the Order; and in that the Court thought the Justices had exceeded their Authority, but doubted as to that Part that ordered *four Pounds;* but ruled the Awarding an Attachment illegal; and Order was confirm'd in the Other Parts.

Easter, Third of *George* the Second.

The King *against* Childers.

AN Order was made on Defendant by Justices at the Quarter-Sessions held at *Maidstone* in *Kent: Whereas* upon Complaint made by the Church-Wardens of *S.* that a Bastard Child is chargeable to the said Parish of *S.* *And Whereas* they have expended forty-five Shillings in and about the Lying-in of *A. B.* Mother of the said Bastard.

Mr. *Filmer* moved to quash this Order, because it does not appear any where on the Face of it, that the Bastard was born in the Parish of *S.* which had made the Complaint. *Easter* 10 *Anne*, Queen against *Biddington*, the King against *Godfry*, *Trin.* 10 *Geo.* 1. which was thus: *Whereas* Complaint has been made unto us by you the Church-Wardens and Overseers of the Poor of *Hitchin*, that on the 5th of *April* last, *Eliz. Burroughs* of *Hitchin* aforesaid, single Woman, was delivered of a Male Bastard Child in the Parish of *H.* which is now living, and ever since his Birth has been chargeable to the said Parish of *Hitchin;* We adjudge *R. Godfry* the reputed Father, and order him to pay three Pounds seventeen Shillings, being the necessary Charges and Expences which the said Parish hath already been put unto in Nursing and Maintenance of the said Child, from its Birth to the Date hereof; the same Exception was taken and held good. Neither is it said in this Order, that the Woman was brought to bed in the Parish of *S.* which ought to appear before they can ask Relief, as was held in Lord *Altham's* Case, *Mich.* 6 *Anne*, and there is nothing mentioned in the Order, to imply the Child was born there, but only that it is said to be chargeable to the Parish of *S.* which in Lord *Altham's* Case was held not to be sufficient; nor are Orders of this kind to be made good by *Implication;* the Justices must entitle themselves to a Jurisdiction. The Order expresses that the Parish of *S.* has expended forty-five Shillings about the Lying-in of the Mother of the Bastard, but does not charge the Lying-in to be in the Parish of *S.* or that the Money was expended there, and a Rule was made to shew Cause why the said Order should not be quash'd.

Afterwards Mr. *Lacy*, to show Cause, said, That notwithstanding the Authority of *Godfry's* Case, yet here are other Words that make it evident the child was born in the Parish of *S.* for the Justices make it a Part of the Case that the Parish of *S.* had been put to the Charge of forty-five Shillings for the Mother's Lying-in, which they have ordered Defendant to pay, and it can hardly be imagined the Parish would have expended this forty-five Shillings, if they could have prevented it, and the Order expressly says that the Church-Wardens had complained the Child was chargeable to their Parish; whence it is necessarily imply'd the Child was born there. 1 *Vent.* 336. 3 *Keb.* 383. the King against *Jenning.*

The Court said, That the Justices have not a Power of acting in all Cases, and therefore if they do not shew in their Orders that the Matter complained of to them is properly within their Jurisdiction, they cannot make an Order relating thereto, as this is a Case of that Sort, for ought appears, the Matter was *coram non Judice*, and the Order must be quash'd.

Michaelmas, Eleventh of *George* the Second.

The King *against* The Inhabitants of Freshford.

MR. *Gundry* came to show Cause why no *Mandamus* should go to make a new equal Poor's Rate upon Mrs. *Davison's* Affidavit, that her Farm was rated at forty-four Pounds *per Annum*, though let only at thirty Pounds, and that the Vestry had refused to do it.

The proper Method is by Appeal, and this Court will not interfere, as there is a Rate in Being, and there is no Instance of such a *Mandamus;* the Adjudication of the Quarterly Sessions is final by the Statute.

Sir *Thomas Abney* on the other Side: *Certiorari* is denied, because during this there could be no Provision for the Poor.

Chief Justice: The Party is not without Remedy; the proper Method is by an Appeal to the Sessions, and if one be lodged, and the Sessions will not proceed upon it, then a *Manda-*

mus will lie; and to make a Return would subject the Officers to Actions. By the whole Court Motion denied.

Easter, Eleventh of *George* the Second.

The King *against* Flint and another.

INDICTMENT against Defendants in these Words, "For carrying and conveying, or causing to be carried and conveyed, with an Intent to burthen the Parish of *Chelmsford*, two Persons having, the Small Pox."

Mr. *Lacey* moved in Arrest of Judgment for Uncertainty, and cited the King against *Stoker*, *Salk.* 371. the King against *Stoughton*, the King against *Brereton*, *Mich.* 11 *Geo.* 1.

Sir *Thomas Denison* on the other Side cited the King against *Best*, and relied on Verdict. 1 *Syd.* 91.

Mr. *Marsh* in Arrest of Judgment: Not said that these Persons had not a Settlement at *Chelmsford*, nor that they were Poor; Verdict in a criminal Case of no Weight.

Mr. *Lacey:* Did convey, or cause to be carried and conveyed; nothing can be helped on an Indictment; it is different from *Salk.* causing to be forged is a Forgery, but carrying and conveying, or causing to be carried and conveyed, may be different Offences; if bad on Demurrer, it must be bad after Verdict.

Mr. Justice *Page* thought it too large, and Verdict will not aid it, thought it ill on both Exceptions.

Mr. Justice *Probyn:* This differs from Conspiracy, because that depends on precedent Matter, this on Act agreed.

Mr. Justice *Lee:* It is bad on both exceptions, and the Reason is, because the Court cannot see what Fine to set, not knowing what was the Part Defendant acted. An Indictment for a Consequence without any Premisses to warrant it, being with Intent to burthen, but not shewn how; perhaps Cases in Law, where Intention may be plainly inferred from Premisses, there Indictment is good. Judgment arrested.

Hilary, Twelfth of *George*.

The King *against* Hart.

MR. Serjeant *Eyre* prayed a *Procedendo* in an Indictment of Assault and Battery found at the Sessions at *Bristol*, where the Defendant came in and confessed the Indictment; and before Judgment given the Prosecutor sued out a *Certiorari* to remove the Indictment; but he said as the Conviction was entered, they had lost the Benefit of a *Certiorari*. Show Cause.

Michaelmas, Thirteenth of *George*.

The King against Tilsley.

THE Defendant was a Clergyman of good Credit, and had a Decent Living in *Oxfordshire*, and was charged with stealing a handful of Hay, which was swore by Affidavit not to be worth one Penny; the Indictment was found against him at the Sessions in the Jurisdiction of *Chipping Norton* in that County; the Case was spirited up by a Town-Clerk who had charged the Jury to find the Bill, and therefore it was said Defendant had no Hopes of obtaining an impartial Jury, if the Indictment was to be try'd within the Jurisdiction, since the Town-Clerk returns the Jury.

Mr. *Fazakerly* on an Affidavit of these Circumstances moved the Court for a *Certiorari* to remove the Indictment *into this Court, or to be tried at the Assizes*, and alledged that a *Certiorari* had been granted to remove an Indictment of Felony found at the Sessions for the County of *Salop*, the King against *Powel*, upon Mr. *Chancey's* Motion. The Chief Justice seemed very angry at this Behaviour of the Town-Clerk, and granted a Rule to show Cause.

Trinity, First of *George* the Second.

The King *against* Buse.

THE Defendant was indicted for keeping a Bawdy-House, and Judgment thereon, that he should stand in the Pillory; a *Certiorari* being granted to remove this Indictment, Mr. *Fazakerly* moved to quash it; because after Judgment it won't lie; there ought to be a Writ of Error brought; but if a *Certiorari* can have the same Effect, no Writ of Error will be hereafter brought in this Court.

Lord Chief Justice *Raymond:* A *Certiorari* certainly lies; but then a Writ of Error should be brought with it.

Then Mr. *Fazakerly* objected, that there was a Variance between the *Certiorari* and the Indictment returned; the *Certiorari* was to remove an Indictment whereon they had proceeded to Conviction; and the Indictment returned had Proceedings on it to Judgment. But the Court held this well enough; the Court would make no Rule, but said they might do as by Law they could.

Hilary, Second of *George* the Second.

The King *against* The Inhabitants of Darlington.

MOVED to reject the Return of a *Certiorari* directed to two Justices of the Peace *Forth* and *Cook*, to bring up some Orders made by them. 1. Because the return was upon Paper, not Parchment. 2. *The Return is in English, when it should be in Latin.* 3. The Writ is directed to both of them, but returned by one only; and a Rule was granted to make a new Return.

Trinity, Twelfth of *George.*

The King *against* Lewis.

THE Defendant was Indicted at the Grand Sessions for the County of *Anglesey* for Embracery, and the Defendant now moved the Court for a *Certiorari* to remove this Indictment into the next *English* County to be try'd on an Affidavit, which was allowed to be sufficient to induce a Suspicion that a fair Trial could not be had in *Wales;* and a Rule being granted to shew Cause, it was admitted, that in Cases of Felony such *Certiorari* lay to *Wales*, by the Statute 26 *H.* 8. *ch.* 6. but for Cases of Misdemeanor only it never was granted, and to prove this Distinction Mr. *Wilbraham* for the Prosecutor cited several Cases, *Cro. Car.* 331. 1 *Roll. Abr.* 394, 248. 1 *Mod.* 68. 1 *Vent.* 93, 146. and he cited the Case in 1 *Roll. Abr.* 394. to shew that *Certioraries* are not to be granted at the Instance of the Defendant, but only of the King, who by his Prerogative may try his Cause where he will; but so cannot a Defendant. On the other Side it was insisted that this Court has a Superintendency in all Criminal Cases, and may direct trials of Offences in any Place they think proper. And Mr. Serjeant *Probyn* insisted, That if *Certioraries* are grantable in Capital Cases, *a fortiori* they may be granted in Cases of Misdemeanor only; and the Statute 26 *H.* 8. only appoints that an Indictment may be found by a Grand Jury out of *Wales*, for a Felony committed there, but that the Statute says nothing of removing Indictments by *Certiorari;* and yet it is a Practice which hath constantly prevailed.

Mr. *Filmer* of the same Side cited *Cro. Ja.* 484. where an Indictment for a Riot in *Wales* was removed by *Certiorari*, and 1 *Vent.* 146. which last Book shews that an Indictment may be removed by *Certiorari* at the Application of the Defendant. The Court on this Motion had some doubt; because they said they could not see any Precedent where an Indictment for a Misdemeanor was removed by *Certiorari*, and afterwards sent down to be tried; and therefore took Time to consider of it, and to look into Precedents, and at another Day several Precedents were produced, and *Posteas* where the Indictment removed from the Grand Sessions had been sent down to be try'd in an *English* County, and returned up into this Court; therefore upon these Authorities the Court granted a *Certiorari* in the present Case.

Trinity, Tenth of *George.*

The King *against* Goulston.

SIR *John Darnel* moved for a *Certiorari* to remove an Indictment found against the Defendant at the *Old Baily*, into this Court to be try'd here; it was an Indictment for a Cheat, and he insisted that the Defendant being a Gentleman of Fortune and Character ought not to be tried amongst Common Felons; and said this had been formerly done where the Defendant was a Person of Credit and Reputation. But by the whole Court it was denied, and said by the *Chief Justice:* We never grant a *Certiorari* but on particular Reasons, and the Defendant's being a Man of Character is no Reason why we should indulge him in this Case; therefore the Motion was denied.

Trinity, Tenth of *George.*

The King *against* Pusey.

DEFENDANT was a Gentleman, and had been a Colonel in the Army, and being indicted at the *Old Baily* for Purjury; he now moved for a *Certiorari* to remove the Indictment into this Court; and though his Counsel allowed that a Writ for this Purpose had seldom been granted, yet as the Defendant was a Gentleman, it would be hard to subject him to a Trial in the publick way at the *Old Baily*, and urged that it was granted in the Case of Sir *Humphry Mackworth*, which was thus: Sir *Humphry* was Governor of the Mine-Adventure Company, and he put the Common Seal of the Corporation to a Writing without the Privity or Authority of the Company; and they would have construed this a Forgery in Sir *Humphry*, and for which he was indicted, and a *Certiorari* granted. But the Court deny'd that Case was like this; and *Raymond* Chief Justice said he knew no Distinction of Persons, either the Rule must stand or be altered in general; if we grant it here, we must grant it in every Case, therefore denied the Motion.

Michaelmas, Eleventh of *George.*

The King *against* The Commissioners of Sewers in the County of York.

AT a Court held before the Commissioners of Sewers an Order was made to remove their Clerk, and another apointed in his Room, and a *Certiorari* was moved to remove this Order into the King's Bench.

Mr. Serjeant *Pengelly:* A *Certiorari* is not to be granted *ex debito Justitiæ* in this Case, nor unless some Affidavit be made to shew the Court a Reason why such Order should be removed. In common Cases *Certioraries* are granted of Course, but are never granted to remove the Orders of Commissioners of Sewers, but where some Allegations are laid before the Court as a Reason to induce the Removal of these Orders; and then it is in the Discretion of the Court to grant a *Certiorari* or not, as they see Occasion. The Commissioners of Sewers are appointed by Act of Parliament, and should this Court interpose upon every Occasion, and remove their Orders without first having a sufficient Reason laid before them, the Safety of the County might be endangered by the overflowing of Water, etc. which their Orders are made to prevent.

Chief Justice and Mr. Justice *Raymond* said a *Certiorari* was to be granted *ex debito Justitiæ;* for this appearing to be an Order which only concerned the removing the Commissioners Clerk, the Court could not deny to grant the Writ; and if upon the Return the Order should appear to be irregular, the Court may quash it like any other Order; but if this had been an Order which concerned the Safety of the Country, the Court would not have granted it without an Affidavit or sufficient Reasons laid before them.

Mr. Justice *Fortescue* denied that a *Certiorari* was due of Right; in this Case he said it was in the Discretion of the Court to grant it, and he agreed it should be granted, and the Writ was granted accordingly by the whole Court. See 1 *Lev.* 288.

Hilary, Second of *George* the Second.

The King *against* Cossing.

AN Indictment was moved to be quashed for want of a Caption, and thereupon a Rule was made that the Clerk of the Peace should attend, and now moved on the behalf of the Clerk of the Peace *for a new Certiorari* to remove the Caption, the Indictment being brought into Court this Term. But Mr. Justice *Page*, the other Judges being absent, said he could not grant the Writ, because the Indictment being already moved, the Justices had no Record before them, and therefore could not make any Answer to the *Certiorari*, which was now prayed, and denied to grant the Writ.

Easter, Twelfth of *George*.

Anonymus.

A *CERTIORARI* was moved for to remove an Indictment found at the Grand Sessions; the Court said there was no Doubt but that they had a Power to grant such a Writ, bu they said the Prosecutor ought first to be heard.

Michaelmas, Second of *George* the Second.

The King *against* Steer and others.

THE Defendants were Indicted for a Riot, and when the Indictment was traversed, and the Jury actually charg'd and sworn, a *Certiorari* was delivered into Court; but the Justices were of Opinion that as the Jury were charg'd, the Indictment should be tried, and the Jury give their Verdict; all which was done, and then the Justices took Notice of the *Certiorari's* being given in, but would not set a Fine.

Mr. *Luke Robinson* moved for a *Certiorari* to remove the Record of the Conviction.

But by the Court: It is in the Discretion of the Justices whether they will proceed to set a Fine; and denied the Motion.

Note; It was said that the *Certiorari* issued out of Chancery, returnable in this Court; which Chief Justice said was wrong, and told him he should move to supersede the Writ, because it was erroneously issued; but *all the Court agreed* that the Justices were not tied up from proceeding by this *Certiorari;* and the last Day of the Term the *Certiorari* out of Chancery returned in this Court; was quashed. In *Salk.* 144. it was held a *Certiorari* cannot be served after the Jury are sworn, and the Justices may return the Verdict. The King against *North.*

Trinity, Second and Third of *George* the Second.

St. Peter's Bedford *against* The Parish of Stephenton.

A *CERTIORARI* issued to remove an Order of two Justices, and was directed to the Justices of the County, but returned by the Justices of the Borough, and for that Mis-return the *Certiorari* was quashed.

Michaelmas, Third of *George* the Second.

The King *against* Greenhaugh.

THE Defendant was indicted for not working at the Highways, and on Mr. *Theed's Motion* the Court granted a *Certiorari* to remove the Indictment into this Court; for the late Statutes have not restrained the Proceedings at Common Law, relating to the Highways, from being removed into this Court; it was granted in the Cases of the King against *Eachard*, and the King against *Coleman*, 12 *Geo.* 1.

The same Term.

Anonymus.

THE Court will grant a Rule, without Notice, for a *Certiorari* to remove Presentments made to the Commissioners of Sewers, though not on the first Motion; but there must be an Affidavit made of the things being repaired, before the Court grants the Rule.

Michaelmas, Fourth of King *George*.

The King *against* Iles.

THE Defendant was indicted for Perjury at the *Old Baily*, and Mr. *Coningesbye* moved for a *Certiorari*, on the Part of the Defendant, to remove the Indictment into this Court, and that the Defendant would plead and try the Indictment in this Term; but *the Court* would not grant the Writ, notwithstanding he cited the Case of Sir *Humphry Mackworth*, and the Case of *Marriot*; for Motions of this kind have been often denied, unless some special Reasons be given to induce the Court to grant it, and no Hardship attends such a Denying of the Writ, for the Judges attend at the *Old Baily*, and he will be fairly tried there.

Easter, Fifteenth of *George* the Second.

Case of the Parish of Sherborn in Dorsetshire.

THE Question was Whether the Child of a Certificate Person can gain a Settlement by Service?

The 9th and 10th of *William* III. says only by serving an Office, or renting a Tenement of ten Pounds *per Annum*, and by no other Means whatsoever. See 8 and 9 *W.* III. *ca.* 30. the Service was in the same Parish,

Chief Justice: The first Act relates to Children born or to be born.

2. Statute confines it to two particular Instances, (*viz.*) renting ten Pounds *per Annum*, and by serving an Office, and not by Service.

And it was agreed by the whole Court that he gained no Settlement by such Service.

Michaelmas, Fourth of *George* the Second.

The King *against* Etford.

THE Court denied to grant a *Certiorari* to the Justices of Assise for the City of *Exeter*, to remove an Indictment found against the Defendant for Forgery, though the Defendant had been punished for the same Offence, upon an Attachment.

The same Term.

The King *against* The Inhabitants of St. James's Westminster.

UPON a Rule to shew Cause, *the Court* granted a *Certiorari* to remove a Presentment for not paving the Street in the *Haymarket*, before the Doors of several Inhabitants there, etc.

The same Term.

The King *against* Pease.

THE Defendant was indicted for keeping a Bawdy-house, and found guilty, and suffered Execution by standing in the Pillory, in pursuance of the Judgment, and afterwards *obtained a Certiorari* to remove the Proceedings into this Court; whereupon the Prosecutor moved for a *Supersedeas* to this Writ, for that a Writ of Error was the proper Process, and not a *Certiorari*. And a Rule was made to shew Cause. *Salk*, 144, 149,

Michaelmas, Thirteenth of *George* the Second.

The King *against* The Inhabitants of an Extraparochial Place called Black Friers, in Chichester.

AN Order of Justices appointing *A.* and *B.* Overseers of the Poor of that Place was quashed upon an Exception, that it did not appear they were *Housekeepers.*

The same Term.

The King *against* The Inhabitants of Chilmerton, and Inhabitants of Flagg in the County of Derby.

TWO Justices appointed *A.* and *B.* Overseers of the Poor for these two Townships, by an Order dated the 2d of *April* 1725.

At *Easter* Sessions following, it was ordered by the Court, for the better and more easy Relief of the Poor within the Townships of *Chilmerton* and *Flagg*, being two Vills in the same County at some Distance from each other, and having usually maintained their own Poor jointly, That the Inhabitants of each Vill should severally henceforward choose their own respective Overseers, to be Overseers jointly of the Poor in the said Vills, and that they should severally collect the Assessments in their respective Hamlets, which Assessments should be made for the Maintenance of the said poor jointly, as heretofore they have usually done; and the Order and Appointment of the said Persons to be Overseers was likewise *confirmed at the Sessions.*

Mr. Serjeant *Baines* moved to quash both these Orders; and his Objection to the first was, That it did not appear thereby that *A.* and *B.* who were the Persons appointed to be Overseers, were House-keepers, which is a Qualification expressly required by the Statute. And to the Second he objected, that the Order of Sessions was void, because the Justices there had no *Original Jurisdiction* in that Case by the Statute 43 *Eliz.*

Mr. *Reeve* insisted, that these two Vills were to be considered as one Parish in Reputation, and consequently that there was a Power in the Justices to appoint Overseers for the Maintenance of the Poor jointly within these two Townships, and urged that it would be inconvenient to quash these Orders, and to subject the Overseers to Actions for the Collections they have made after the Year expired. But the Court quashed both the Orders.

Michaelmas, Thirteenth of *George* the First.

The King *against* Dr. Tanner.

A *MANDAMUS* was directed to the Defendant who was Archdeacon of *S.* to swear in *J. S.* into the Office of Church-Warden. He returned, that by Virtue of such a Canon, the Parson and the Parishioners are to choose Church-Wardens, and if they cannot agree, then the Parson is to name them, and then set forth that the Parson and the Parishioners could not agree in their Nomination, by which the Right devolves solely upon the Parson, who had accordingly nominated *J. N.* and therefore, etc. It was objected, that this Return was bad, because Church-Wardens are to be chosen of Common Right by the Parish; and it is by a particular Custom the Parson has a Right to choose one, but it does not appear by this Return there was any such Custom in this Parish, Chief Justice *Holt* was of Opinion that the Election of Church-Wardens belongs of Right to the Parishioners. The Returning a Canon is no Answer to a *Mandamus* in this Case, but a Custom may be return'd, *Hardress* 379. the Suggestion in the Writ must be particularly answered, *Salk.* 431. the King against Bailiffs of *Malden*, the Returning not duly elected, only wants a sufficient and known Certainity, for it may be meant either of an Election by the Parson or by the Parishioners. The return is defective in not saying *as by the Writ is supposed.*

Lord Chief Justice *Raymond:* The Clause of We further certify that he was not duly elected, is a distinct and independent Clause from the rest; and for that Reason the Return is insufficient for want of Certainty. It is common in Returns to set out a particular Matter;

but for fear of any Mistake they say in the End that he was not duly elected. A greater Certainty is required in a *Mandamus* and the return to it, than even in an Indictment; the Return ought to be so certain as that no Action may he brought to try the Fact.

Mr. Justice *Fortescue:* The Clause of We further certify, would be an Independent Clause, if there was not a different Election set out, for here appears to be two Elections. Adjourned.

The Book of Canons is, that the Parson may elect one Church-Warden, and the Parishioners another. *March Rep.* 5.

Michaelmas, First of *George* the Second.

The King *against* Elliott.

AN *Habeas Corpus* was sued out to remove Defendant; Gaoler returned that he was committed to his Custody by the Justices of a Corporation Sessions of the Peace; and on the Return these Exceptions were taken to the Commitment. 1. This Commitment appears to be made by two Justices at a general Sessions, and such an Act is illegal and void, because two Justices cannot make a Sessions. But the Stile of the Court always runs, Before *A.* and *B.* and their Fellows, Justices, etc. but this was not allowed, 1 *Syd.* 144. King against *Mayo.* 2. The Commitment says Defendant was concerned in an Affray, and after several Proclamations made for Silence, and he still presisting to disturb the Court, they fined him forty Shillings, and committed him for not paying the Fine. Then as the Commitment does not specify that they demanded the Fine of him, or that he refused to pay it; therefore the Commitment bad; not allowed. For by the Court, if there be a good Reason in the Order that will support the Commitment, and two bad ones in the same Order; the bad ones shall not vacate that which is a good Reason, but the good one shall weigh down the bad, and render the whole order valid. Defendant was remanded.

Trinity, Second of *George* the Second.

The King *against* Brown.

DEFENDANT was brought up by *Habeas Corpus*, after he had been committed by Warrant of Commitment dated 27 *September* 1727. and made in this Manner, To the Constable of, etc. or his lawful Deputy, These are in his Majesty's Name to require you to bring before us or some other of his Majesty's Justices of the Peace of the said County, the Body of *Stephen Brown; That Whereas* Complaint having been made to us that he is the Father of a Bastard Child; if he refuse to appear before us, then you are to carry him to the Common Gaol of the said County. They likewise made a Warrant to the Gaoler to detain him *till delivered by due Course of Law.* An Exception was taken to this Commitment, that at the Time it was dated it appears there was no Order of Bastardy made; and then the Justices had made a Warrant without any Foundation; for it is not sufficient to commit a Man barely upon a Complaint that he is the Father of a Bastard Child, unless it be adjudged that he is so; for the Order of Bastardy appears not to be made till two Days after the Date of the Warrant, and then the Order cannot support the Warrant. The Commitment is illegal in another Respect, for the Warrant requires the Constable, upon Refusal, to appear before the Justices to carry Defendant to the County Gaol; and this is in Effect making the Officer the Judge; but the Warrant should have been to have carried him before some Justice who should have committed him.

Michaelmas, Fourth of *George* the Second.

The King *against* Solomon Nathan.

THE Defendant was committed to Prison by Warrant of the Commissioners of Bankrupts; "*Whereas* we, etc. have found and adjudged that *S. N.* did become Bankrupt, etc.

And Whereas we have caused the said *S. N.* to be brought before us to the End we might examine him touching the Disclosure and Discovering his Estate and Effects, and it appearing to us on such his Examination, that the said *S. N.* hath remitted and conveyed great Sums of Money and Effects unto Parts beyond the Seas, with Intent to defraud his Creditors; and the said *S. N.* upon his Examination before us, etc, hath notoriously prevaricated; We do therefore will, require and authorize you, etc. to take into your Custody the Body of the said *S. N.* and him safely to convey to his Majesty's Prison of the *Fleet*, and there to deliver him to the Warden of the said Prison, who is hereby authorized to receive the said *S. N.* into his Custody, and him safely to keep without Bail or Mainprize, until he shall make a full and true Discovery of his Estate and Effects, etc. or he be otherwise delivered by due Course of Law."

The Defendant brought an *Habeas Corpus*, and the Commitment and Return to the Writ being read, he moved to be discharged out of Custody, and took Exceptions to the Warrant; That this Authority given to the Commissioners to commit to Prison, being a special Authority and a limited Jurisdiction created by the Statute 1 *Jac.* 1. §. 7 and 8. they ought in every Instance, where they commit to Prison, to shew they have acted within their Jurisdiction, for this is not like a Commitment founded upon a general Authority; the Defendant has not refused to be examin'd, nor does it appear he has prevaricated touching *his Examination;* the Word *Prevaricate* is a Term of a loose and uncertain Signification, and quite foreign to the Statute, neither does it appear he has prevaricated about the Matter of his Examination touching his Effects, and the Prevarication has no Respect to the Eloyning of his Goods. The Statute enacts, That upon a Commitment he shall be detain'd till he has better conformed himself; but this Commitment is on quite different Terms, *viz.* till he has made a full Discovery of his Effects, etc. The Commissioners ought to keep themselves to the Form prescribed by the Statute, as it is resolved in *Yoxley's* Case, *Salk.* 351. who was committed by the Earl of *Nottingham*, till he should be delivered by due Course of Law, for refusing to be examined, and answer, whether *Jesuit* or not, according to 35 *Eliz. ch.* 2 which impowers the Justices to examine and commit him, if he refuse to answer such Questions. So *Bracy's* Case, *Salk.* 348.

Mr. *Reeve* said, That according to his Notes of that Case, *Bracy* was committed till he conform, *or otherwise be discharged by due Course of Law*, which last Words are omitted in the printed Case.

Sir *John Strange* on the same Side: The Commissioners have stated in the Commitment, that by his Examination they find he has concealed his Effects, but upon the Statute of 1 *Jac.* 1. they ought to have exhibited Interrogatories in Writing to the Defendant, and examined him upon those Interrogatories; but no Step of that kind has been taken by the Commissioners in this Case; which is wrong in them; so that to constitute the Offence, Interrogatories ought to have been shewn him, and before that is done he is guilty of no Crime, and therefore his Commitment is illegal; and if he had misbehaved himself then he might have been set in the Pillory, by the Statute 21 *Jac.* 1. Every Commitment of this and all other of the same Nature ought to be very certain, and not grounded on slight Expressions; and the Continuance of the Commitment cannot be justified, as may be evinced from the Cases in *Salk.* and ought to be taken strictly, as depriving the Subject of his Liberty; in the Case of the King against *Tracey*, *Hil.* 1 *W.* 3. Articles by way of Interrogatories shall be in Writing.

Mr. Justice *Page* cited a Case of a Bankrupt in the City of *Bristol*, committed by the Commissioners, and there held that the Articles charged against the Bankrupt in the Interrogatories, ought to be in Writing; and if the Bankrupt should desire Time to answer the Interrogatories, the Commissioners ought to give him a Copy of them.

Mr. *Reeve* against the Defendant: The Commissioners need not put the Interrogatories in Writing, much less insert them in the Warrant of Commitment; but the Court should intend that he was examined in that manner, especially it appearing by the Warrant that he was sworn and examined. The subject Matter of his Examination is for Prevaricating to discover his Effects, and that appears by this Commitment. The Statute says, If he rufuses to be examined, or does not fully answer on Interrogatories, then he is to be Committed. Then it

may be a Question, Whether a Man's being charged with Prevarication does not fall within the Description of the Act?

The Court held the Form of the Commitment should have been till he submit to be examined; every Prevarication does not subject a man to a Commitment, nor is it said he prevaricated upon *such* his Examination relating to the Discovery of his Effects, but only that he prevaricated upon his Examination, which might be on some other Matter; the Commissioners ought to pursue their Authority strictly, nor can they commit in any other manner than that prescribed by the Statute.

And by the *Chief Justice:* A man may prevaricate at his first Examination for half an Hour, yet in the Conclusion he may make a full and ample Answer, and therefore it is not at all proper to send a Man to Prison for such a Piece of Conduct, and nothing is more common than such Behaviour on Trials at *Nisi prius.*

The Court were unanimously of Opinion that the Commitment was void in Point of Form, principally, as not appearing he was examined on Interrogatories in Writing; and the Defendant was discharged from the Commitment, but remanded on some civil Actions depending against him.

N. B. In Answer to *Yoxley's* and *Bethel's* Case in *Salk.* 348. This is such an Offence as is not bailable.

Michaelmas, Eleventh of *George.*

The King *against* Edwards and others.

THE Defendants were indicted at the Sessions in *Essex* for a *Conspiracy,* and the Charge alledged against them in the Indictment was, That they being Overseers of the Poor in the Parish of *A.* and there being one *B.* a poor lame and infirm Woman within the said Parish, they had given a small Sum of Money to a Poor Man of the Parish of *C.* to marry this *B.* and so by this Contrivance had conspired to settle *B.* in the Parish of *C.* the Settlement of her Husband.

Mr Serjeant *Baines* moved to quash this Indictment, because there was nothing criminal alledged therein. The giving a poor Woman a Portion, and marrying her, was a good Act, and not punishable as a Crime.

Secondly he insisted, that if this was a Conspiracy in the Defendants, it was not within the Jurisdiction of the Sessions.

Mr. Serjeant *Comyns* on the other Side: A bare Contrivance to act to the Prejudice of another is Criminal. A Conspiracy is indictable, though no Act be done in Pursuance of it. 1 *Lev.* 63. 1 *Vent.* 304. *Poulton's* Case, 9 Co. 1 *Lev.* 125. 1 *Salk.* 174. If this had been a Conspiracy to put a Charge upon a single Person, it had been Indictable; much more so where the Conspiracy is to put a Charge upon a whole Parish, as in this Case the Defendants have done; and insisted that the Sessions had a Jurisdiction in Offences of this Nature, by Statute.

Chief Justice: Indictments for Conspiracies are not allowed to be quashed, where the thing that is conspired is in its own Nature Criminal. But where it plainly appears by the Indictment that the Act which was done to the Prejudice of another was a lawful Act; the Court hath a discretionary Power to quash. If it be doubtful whether the Act done be Criminal or not, yet if it be done with an ill Intent or Design, we will not quash the Indictment. I am of Opinion the Indictment in this Case ought not to be quashed; but the Defendants must be left to demur or plead to it, as they think fit; to which Mr. Justice *Powis* agreed.

Mr. Justice *Fortescue:* It must be governed by the Course of the Court in such Cases as these; and I never knew any Indictment, for so high an Offence as Conspiracy, quashed upon Motion, though the Act was lawful which is conspired, yet if the End of it be unlawful, it is a Conspiracy and indictable. He seemed to think the Sessions had a Jurisdiction in Indictments of this kind, and said the Commission of the Justices did give them a Jurisdiction.

Mr. Justice *Raymond:* Quashing is an act of favour, and wherever the Crime charged is of an high Nature, the Court having a discretionary Power will not quash, but put the Defendant to demur or plead as he can. And *by all the Court* the Motion to quash the Indictment was denied.

Afterwards, in *Trinity* Term following, the Defendant demurred to this Indictment, and had Judgment, because it was held not an indictable Offence.

Easter, Eleventh of *George*.

The King *against* Setterton.

THIS was an Indictment against the Defendant, which set forth that the Defendant had endeavoured to lay a Bastard Child against one *Lee*. There were several other Faults in the Indictment; upon which Mr. *Fazakerly* moved to quash it.

But *by the Court:* As this is an Indictment for so high an Offence, we will not quash it whatever Faults it hath, and so left the Defendant to demur.

Michaelmas, Second of *George* the Second.

The King *against* The Overseers of Towcester.

TWO Justices of Peace removed a poor Woman with Child from *A.* to *Towcester;* the Overseers of *T.* persuaded the Woman by a Promise of five Shillings and a new pair of Shoes, to return to *A.* from whence she had been sent by the Order; she complied with this Offer, and was delivered of a child in *A.*

Sir *John Strange* moved for an Information against the Defendants as for a Conspiracy to charge the Parish of *A.*

But *by the Court:* The Woman and her Child may again be removed to the Parish of *T.* and that will discharge the Parish of *A.* of the Expence of maintaining them; you might have indicted them; they would not regard his Urging it to be a thing of Example, which deserved the severer Punishment of this Court.

Lord Chief Justice *Raymond:* It was held *in Holt's Time* if a poor Person was legally removed, and afterwards by Stealth or Contrivance of the Officers got into another Parish, and was there delivered, the Child was esteemed to belong to the Parish to which the Mother had been legally removed, and not to that where born.

Easter, Fifteenth of *George* the Second.

Anonymus.

ORDER of Bastardy: *Whereas* a Bastard was born in the Parish of *Gravesend*, etc. They order the Defendant to pay thirty-six Pounds for Maintenance and other incident Charges, etc.

It was objected, that there was no Adjudication that the Child was born in *Gravesend*, but only Recital, and further that it was too general, (*viz.*) incident Charges, not saying what those Charges were. But it was resolved by the whole Court, That the Order was well; for first, it is only to shew the Jurisdiction, which is not necessary to be adjudged.

Secondly, It is sufficient, for it must be understood to be Charges relating to the Bastard, and said that such general Expressions, in Orders of this Sort, were allowed, as in the Case of the King against *Blackwell*, in the fourth Year of King *George* the first.

Easter, First of *George* the Second.

The King *against* Wakeford.

MOTION to quash an Order of Sessions relating to the Election of a Constable chose by a Court-Leet, for the Town of *Lymington*. The Order set out the Custom of nominating five Persons, one of which is named by the Mayor; that the Person named by the Mayor was postponed and another chose. Upon an Appeal from this Choice to the Sessions, the Justices order the Person chose and sworn Constable by the Steward of the Leet, to be discharged, and appointed the Person nominated by the Mayor to exercise the

Office; and it was observed that the Statute 13 and 14 *Car.* 2. *ch.* 12. does not extend to give the Sessions any Power in this Matter. It was said for the Order, that Chief Justice *Holt* had laid down a Rule in the Case of *Chorley*, *Salk.* 175. that the Justices have all along exercised a Power of appointing Constables, and the Court will intend they have good Authority for it. But the Statute 13 and 14 *Car.* 2. gives them Authority to do it only in the particular Cases therein mentioned; in Sir *T. Jones* 212, upon a doubt that arose concerning the Election of a Constable, the Justices did determine who was chose, and the Order being removed into this Court was confirmed. So in *Salk.* 150. the King against *White*, held that Constables might be removed, and that Justices at Sessions were the best Judges of the Matter; so in *Comber. Rep.* 20. Mr. Serjeant *Cheshire*, who argued this Case, said, it was a necessary Jurisdiction, and ought to be favoured. 1 *Ro. Abr.* 535, 541.

By the Court: There is no Question but generally the Justices by Power of the Statute *Car.* 2. may appoint Constables; but here is a Custom alledged, which you may try if you will.

Mr. Serjeant *Hussey* on the other Side: In the Case of the King against *Pyke* and *Larrymore*, *Hilary* 8 *Geo.* 1. it was held that a Fact of this kind was not to be try'd by the Sessions, 1 *Bulst.* 174, *Mich.* 8 *Anne*, Queen against *Wheatcroft*, there was a Constable chose by a Leet, and an Appeal to the Sessions in Favour of one chose by the Parish at large, and the Sessions removed him chose in the Leet, and appointed another in his Room; and the Order being removed was quash'd, unless Cause, and the Election in the Leet confirm'd; and then it was said by the Court that the Sessions derives this Power from the Statute *Car.* 2. which is not to be extended. Queen against *Dummer*, *Trinity* 2 *Anne.* It was held that a Constable chose in the Leet may have a *Mandamus* to swear him if opposed, the King against *Beal*, *Trinity* 7 *Geo.* 1. there the Sessions discharged a Constable who had been appointed Tithingman in another Place, and the Court held that the Sessions could not discharge him; nothing has been said to shew the Sessions has intermeddled before the Statute; *the Court* now deny'd the Case in 2 *Jones;* and the Chief Justice said, Where the Justices have been in Possession of this Jurisdiction, it is good, but in this Case it appears the Leet at all times has exercised the Power of choosing, and quashed the Order.

Trinity, Twelfth of *George.*

Hill *against* Bateman and another before Raymond, Chief Justice in Middlesex.

MR. *Bateman* was a Justice of Peace, and the other Defendant was a Constable who had executed a Warrant of Commitment upon a Conviction for destroying the Game; without levying the Penalty on the Plaintiff's goods. It was agreed in an Action of false Imprisonment, that as to the Constable the Warrant was a sufficient Justification; it being in a Matter within the Jurisdiction of the Justice of Peace; but if a Justice of Peace makes a Warrant in a Case which is plainly out of his Jurisdiction, such Warrant is no Justification to the Constable.

Easter, Twelfth of *George.*

Delamot's Case.

MR. *Delamot* was a Justice of Peace in the County of *Kent*, living within the County, and having a House also in the City of *London;* he was appointed Constable in the Ward where his House was.

Mr. Serjeant *Cheshire* moved the Court to grant him a Writ of Privilege, which the Court denied, saying they had nothing to do with it; but he might apply to the Sessions under the Statute *Car.* 2.

Michaelmas, Thirteenth of *George.*

The King *against* Goldsmith.

THE Defendant was indicted for erecting and continuing two Cottages, without an Allotment of *four Acres* to each, contrary to the Act of 31 *Eliz. ch.* 7.

Mr. *Fazakerly* moved to quash it, and his Exception was, That it set out he continued the Cottages for the Space of ten Months and upwards, but does not set forth at what time the Erection was; then it cannot be computed from what date the Erection, or rather the ten Months, is to be computed, and that is necessary to be done in order to tell for what time to assess the Penalty, since by the Statute there is a Forfeiture of *forty Shillings a Month* appointed; therefore it is necessary to shew at what Time the Erection was, and how long continued. *The Court* seemed to think this a good Exception, and made a Rule to shew Cause, which was afterwards made absolute without Argument.

N. B. The Erection or Conversion of an House to a Cottage is *ten Pounds to the King*, 2 *Inst.* 736. 31 *Eliz. ch.* 7. and *forty Shillings a Month so long as he continues the same.*

Easter, First of *George* the Second.

The King *against* Simpson.

A CONVICTION for Deer-Stealing, made upon Oath of one credible Witness, the Defendant must be summoned, or the Court of King's Bench will quash it when removed by *Certiorari.*

Trinity, Ninth of *George.*

The King *against* Ashton.

THE Defendant was convicted for destroying Fruit-Trees, but the Conviction did not adjudge what Punishment the Defendant should suffer, as the Statute 1 *Geo.* 1. *ch.* 48. directs.

To this Exception Mr. *Wearg* answer'd, That when the Party is convicted, the Punishment is provided and ordered by the Law, and is the necessary Consequence of such Conviction, and need not be expressed or appointed by the Justices of Peace.

Lord *Chief Justice:* The Statute particularly directs the Punishment for this Offence, and enacts, That if Justices of the Peace convict any Person of such Offence, then such Justices, immediately after such Conviction, shall commit such Offender to the House of Correction, there to continue and be kept to hard Labour for the Space of Three Months, and where there are no Houses of Correction in any County where such Offender shall be convicted, the said Justices shall commit such Offender to the Gaol for four Months, and it is not sufficient for the Justices to say that the Defendant was convicted, but they must ascertain the Punishment pursuant to the Statute.

Mr. Justice *Eyre:* In the Case of a Deer-Stealer the Conviction was adjudged sufficient without adjudging the Punishment. King against *Searle*, King against *Colebrook.*

Mr. Justice *Fortescue* seemed to be of the same Opinion. So it was adjourned.

Trinity, Eleventh of *George.*

The King *against* Slack and another.

DEFENDANTS were convicted for selling Hides not being Tanners, and the Conviction set forth that *J.* S. had informed the Justices of the Peace that the Defendants *A.* and *B.* had sold Hides not being Tanners; that they had neglected to pay the Duty, by which Default they had forfeited such a Sum. Upon Consideration of the Information aforesaid, the said two Justices had convicted the said Defendants in such a Sum; and this Conviction was quashed upon Motion, because here were two Informations, one against *A.* the other against *B.* and the Conviction was joint, and no Distinction made what each was to pay for his several Offence, but all jumbled indiscriminately together.

Michaelmas, Eleventh of *George.*

Anonymus.

THE Defendant was convicted on the Statute 8 *Geo.* 1. *ch.* 18. to prevent the clandestine running of Goods. Two Exceptions were taken to the Conviction; 1. There are

several Clauses in the Statute prohibiting the clandestine Importation of Goods, and mentions particular things; and another Clause, upon which this Conviction is founded, provides a Penalty against any Person *receiving or buying* any Goods so clandestinely run or imported; and it was insisted, that the Conviction ought to have set forth how the Goods were clandestinely imported, for the Statute does not extend to all Goods clandestinely imported, but hath Reference to the preceding Clause, *viz.* Goods so imported, and extends only to Goods imported in that particular Manner. Another Exception, That it was not said that Defendant received the Goods for his private Lucre, and that he bought as well as received them all, which are the Words of the Statute that make the Offence.

By the Court: The Words *so imported* go only to a Description of Goods in general, and are not to be restrained to have Reference to the foregoing Clause. As to the Exception, that the Conviction had not set forth that Defendant received the Goods for his private Lucre; the Conviction says he received them unlawfully, which supplies it; and the Conviction need not set forth that the Defendant bought the Goods; for the Statute is in the Disjunctive, *buying or receiving*, and it is the Receiving which makes the Offence. Therefore Judgment was given for the King.

The same Term.

The King *against* Cole and others.

THE Defendants were convicted of Deer-stealing, and committed in Execution, and were brought up by *Habeas Corpus*, and the Warrant of Commitment was likewise returned and read. Moved to have the Defendant discharged.

But the Court said, We can do nothing upon the Commitment till the Conviction is in Court; for want of that, Defendants cannot be discharged, and the Conviction was ordered to be returned by *Certiorari*.

The same Term.

The King *against* Pratt.

DEFENDANT was convicted on the 8th of *Anne, ch.* 9. for obstructing the Officer of Excise to enter his House and to weigh his Candles; and the Conviction being removed by *Certiorari*, an Exception was taken to it, that it did not ascertain whether the Defendant refused the Officer Entrance in the Day-time, or the Night; for there is a Clause in the Statute which makes a Distinction between weighing Candles in the Day-time and in the Night, and provides different Remedies in each Case; therefore the Conviction ought to have shewn particularly at what time the Refusal was, otherwise the Justices did not entitle themselves to a Jurisdiction. But *the Court* held the Conviction good, seeing it was alledged that the Officer had been refused and hindred from making a lawful Entry, and the Court would presume that it was an Entry in the Day-time, and affirmed the Judgment.

Michaelmas, First of *George* the Second.

The King *against* Wooffendale.

MR. Serjeant *Comyns* moved to quash a Conviction for cutting down Trees contrary to the Statute 6 *Geo.* 1. *ch.* 16. the Statute enacts, That if any Person *cut down Trees without the Consent of the Owner*, and be convicted thereof, he shall be liable to the Penalty of the Act. Now the Conviction does not express that this was done without the Consent of the Owner, and possibly it might be with his Consent, unless the contrary be shewn, and then he cannot be punished for it.

Chief Justice: We always hear Convictions out of the Paper of Causes, never upon Motion; the Defendant should bring his Writ of Error to set aside the Conviction.

Easter, Thirteenth of *George*.

The King *against* Betts.

THE Defendant was convicted by the Commissioners for Licencing Hackney Coaches for plying in the Streets without Licence, contrary to the Statute 5 and 6 *W.* and *M. ca.* 22.

The Counsel for the Defendant opened the special Fact stated in the Conviction, that the Defendant plied as a Stage-Coachman to carry Persons from *Whitechapel* within the Bills of Mortality, to *Bow* and *Stratford* out of the Bills of Mortality, for one Shilling; that he took up a Person at *Whitechapel* for the whole Fare, and without any Appearance of Collusion set him down at a Place within the Bills of Mortality for Half his Fare, *viz.* Sixpence; it was in the Way to *Stratford*, and he plied him for a Passage to *Bow* or *Stratford;* no Statute extends to this Case, for Stage-Coaches are entirely out of the Jurisdiction of the Commisioners. *Salk.* 612.

Mr. *Reeve* for the Conviction agreed, that Stage-Coachmen were not now obliged to take Licences; but the Statute of 1 *George ch.* 57. is a general Restraint that no Stage-Coach shall ply in the Streets without a Licence.

By the Court: The Statute of 1 *George* relates only to Coaches plying or driving for Hire, to attend Funerals without a Licence; there the Commisioners have power to proceed to convict the Party in a Penalty of five Pounds; and this was spoke to a second time, when *the Court* held the Conviction ill, and quashed it.

Hilary, Twelfth of *George.*

The King *against* Alkington Recorder, and Squire Mayor of Hertford.

THE Defendants were Justices of the Peace for the Corporation of *Hertford*, and had committed one *Venables* for keeping a disorderly House, and the Order of Conviction being removed into this Court, an Exception was taken to it, That it did not appear *Venables* was summoned before he was convicted. But *the Court* confirmed the Order, because they said they would not intend that the Justices had convicted without summoning the Party unless it had so appeared by the Order itself. But *the Court* said, If the Justices had really convicted without summoning or hearing, an Information would be granted against them for Male Practice; and afterwards, upon Affidavits of the Party's being convicted and committed without having been heard or summoned, an Information was granted against them both in this Term.

Note; This was an *Order*, and not a *Conviction*, for in a Conviction it is necessary.

Easter, Eleventh of *George.*

The King *against* Tuck.

THE Defendant was Convicted for swearing several Oaths, and speaking several Curses. And Mr. *Fazakerly* moved to quash this Conviction upon two Exceptions;

1. In the Information given to the Justices of the Peace, the Defendant was a Gentleman, but in the Evidence which is set forth in the Conviction, and upon which it is founded, it does not appear of what Degree the Defendant was; and as the Statute provides different Punishments and Forfeitures for them of different Degrees, it ought to have appeared by the Evidence that he was a Gentleman, and it is not sufficient that it appears so in the Information, for that is only a bare Information and not Oath, which supports the Evidence given of his Quality.

2. It does not appear in the Evidence that the Defendant was above sixteen Years of Age, which is required by the Statute to bring him into the Penalty of it, and though it is said in the Information that he was above sixteen Years old, yet that is not sufficient, it ought to have been in the Evidence which is upon Oath.

But *by the Court:* There is nothing in these Exceptions; by awarding him to pay two shillings for each Oath it appears he was a Gentleman, and that is sufficient; but such Convictions ought not to be strained to hurt the Liberty of the Subject, and affirmed the Conviction.

Hilary, Twelfth of *George.*

The King *against* Poplewell.

A CONVICTION for Swearing was held to be ill because it did not set forth the particular Oaths; and the Court said this was a common Exception, and that the not setting forth the particular Oaths had been frequently adjudged to be ill. See the Statute of 21 *Ja.* 1. *ch.* 20. made to prevent prophane Cursing and Swearing, and also the Statute of the 20th of *Geo.* 2. touching the same.

Trinity, Twelfth of *George.*

The King *against* Fish.

THE Defendant, an Attorney, was indicted for extorsively taking five shillings for an Arrest, whereas there was never any Arrest; and it was moved to be quashed, as not being Extortion.

But *the Court* said, they would never quash an Indictment of this Nature, but put the Defendant to demur.

Hilary, Twelfth of *George.*

The King *against* Banks.

MR. Serjeant *Hawkins* moved to quash an Indictment for a forcible Entry into a certain Messuage or Tenement, and one Garden and one Orchard. Upon the Rule to shew Cause he argued, That it has been resolved, that the Place in which the Force is supposed to be committed, must be described with convenient certainty; for otherwise the Defendant would neither know the special Charge to which he is to make his Defence, neither would the Justices or Sheriffs know how to restore the injured Person to Possession. Hence it follows, that an Indictment of forcible Entry into a Tenement (which may signify any thing wherein a man may have an Estate of Freehold) or into an house or Tenement, or into two Closes of Meadow and Pasture, or into a Rood of Land, or into such an House, without shewing in what Town it lies, is not good. *Dalton* 15. 2 *Roll. Rep.* 46. 2 *Ro. Ab.* 2 *Cro.* 621.

The Court held the Indictment faulty as to the Messuage or Tenement, but good for the Residue. An Ejectment will not lie for one Messuage or Tenement. 3 *Mod.* 238. *Bulst.* 317.

Trinity, Twelfth of *George.*

The King *against* Parr.

THE Defendant was Indicted for a forcible Entry, and upon a Demurrer to the Indictment two Exceptions were taken to it; First, That it did not set forth what Estate the Party had, which hath always been held necessary, *Easter* 10 *Anne*, the Queen against *Cumberland*; *Easter* 11 *Anne*, the Queen against *Hawley*: *Hilary* 6 *George*, the King against *Harrington*, *Salk.* 260. and the Reason is why the Estate of the Party must be set forth, because he may be Tenant at Will only, and if so he is not within the Statute of forcible Entry. The Second Exception was, It was set forth that the Defendant entered into the Lands of *J. S.* then and yet being the freehold of the said *J. S. Stile* 87. which is absurd; for if this were true, there could have been no Disseisin, *Hil.* 10 *George*, the King against *Graham*; the King against Clark, 2 *Show.* 418, 272. *Allen* 52. The Court allowed both Exceptions to be good; and Judgment given for the Defendant.

Hilary, Eighth of *George.*

Anonymus.

IT was moved to quash an indictment for entering a Garden belonging to a Messuage of *A. B.* but did not say *A. B.* was in Possession, for the Defendant himself might be in Possession, and granted.

Hilary, Thirteenth of *George*.

The King *against* Edmonds.

THE Defendant was Indicted, for that he with force and Arms entered the Close of *A. B.* and trod down his Grass with his Horse, broke his Hedges, and prostrated his Ditches, against the Peace, etc.

Mr. *Marsh* moved to quash it, and urged it was proper for an Action of Trespass.

But *by the Court:* The Indictment is well laid, being with Force and Arms, and will lie for a private Trespass.

Hilary, First of *George* the Second.

The King *against* Sir Edward Ellewel.

THE Defendant was convicted by three Justices of the Peace upon the Statute 15 *Rich.* 2. *ch.* 2. for a forcible Detainer, and sent to *Maidstone* Gaol, and being removed into this Court by *Habeas Corpus*, he moved to be discharged for an Irregularity in the Commitment; the Words of it were, *'till he should be delivered by due Course of Law;* but the Statute directs that, upon Conviction they shall be sent to the next Prison, and kept there till they have made fine and Ransom to the King. The Statute ought to be pursued, since the Justices derive their Authority from it.

This is like a Judgment and Execution at Common Law, if the Judgment is once given, a Man can have no Remedy against it; but if the Execution is wrongfully executed, the Party may have Redress against it. The Commitment is not in Court, but since the Words of the Statute are not recited it is vicious, and till the Fine is set the Commitment is not good.

On the other Side; If the Conviction upon the Record is good, the Nature of the thing will be a sufficient Guide to explain what is meant by due Course of Law. It was insisted the Justices are not obliged to set a Fine at the Time of the Commitment. The Answer is, That in the Case of *Jones*, committed by two Justices, a Fine was set that Instant, and the Rule for an Information was discharged.

Mr. *Marsh* for the Defendant: The Conviction sets forth, that she the Prosecutrix was seised of an Estate of Freehold at the Time of the Entry for her Life, but does not carry the Seisin of the Estate to the Time of the Detainer; the first might be a long Time before this, according to the Case in 1 *Sid* 102.

Second Exception; Here the Justices have set no Fine; in Colonel *Layton's* Case, *Salk.* 353. it was objected upon the Return of the *Habeas Corpus*, that the Fine was set at another Time, but the Court held that the Fine might be set after the Conviction, as in *Lambard's Eirenarcha.* If this Case is grounded on the Statute *Richard* 2. the Justices cannot convict a Man of forcible Detainer without a prior Conviction of forcible Entry. But if this Case is built on the 8th of *H.* 6. *c.* 9. it is otherwise.

The Statute of *Richard* 2. only gives Power to convict on View, and for that very Reason ought to be pursued. The Statute injoins Imprisonment till the Party makes Fine and Ransom, but here the Commitment is only till he pay the Fine; to say detaining contrary to the Form of the Statute, is not sufficient, without disclosing the Facts which may bring this Case within the Statute, as it is not well against the Form of the Covenant; the detaining the Possession of the House from her may be a legal Detainer; the Justices should have set a Fine; for the Statute of *Richard* 2. enacts, that the Party offending must be committed to Gaol, and remain convicted till Fine and Ransom is made to the King. This Conviction says, that she hath complained, and not in the present Tense complains.

Mr. Serjeant *Whitacre* for the King: This Court may impose a Fine, if the Justices do not, 7 *Ed.* 1. Statute of *Northampton*, 2. *Ed.* 3. *c.* 3. *Crompt. Jur. Cur.* 54. 15 *R.* 2. *c.* 2. I cite these Statutes and Authorities to shew the Judges of this Court have intermeddled with these Convictions, that the Statute of *R.* 2. gives time to set the Fine; and if a *Certiorari*, which in its Nature is a *Supersedeas*, as in this Case, was delivered by that time the Party got to Gaol, it devested the Justices of a Power of setting the Fine, and 2 *Inst.* 419. proves

the Judges of this Court may set the Fine; it has been done, 1. *Sid.* 156. the King against *Chaloner*, 1 *Keb.* 572, 585. where a small Fine was set by this Court Convictions on forcible Entries may be brought into Court by the Justices themselves. 4 *H.* 7. 18. *Crompt. Jur.* 186.

Court said: Can this, Brother, be done out of any Court in *England*, we ask you?

Lord Chief Justice *Raymond:* I never remember, where a Conviction is regular, and the Commitment is not exactly performed, that this Court has discharged the *Habeas Corpus* for removing the Commitment; I should be glad to have Precedents shewn me; we should have the Conviction before us; the Judge who sees the Offence done is the only proper Person to compute the Measure of it, and can we here be supposed to know the Offence better at this Distance than the Justices concerned in the View? This Method you argue for would let in a Tide of Oppression; for if the Party be committed until he has paid the Fine, he then has it in his own Power to pay it instantly; if on the Commitment the Justices do not set the Fine, he cannot be removed hither till the Term following, before which time this Court could not be ready to set the Fine. The Power of Committing is intrusted to the Justices by Act of Parliament, and they must follow the Directions of the Act. In the Case of the King against *Leade*, I think the Court was of Opinion they cannot set the Fine; and there is a Case in *Keb.* reversed for this very Defect; here the Defendant is committed till the Fine is set; when the Words of the Commitment should be *till he pay it*, which presumes the Fine was set. 2 *Keb.* the King against *Sutton*, 671.

Mr. Justice *Page:* If it is necessary the Fine should be set before the Commitment, the Commitment is irregular.

Mr. Justice *Reynolds:* I am very doubtful whether the Practice of this Court doth authorize us to discharge a Warrant grounded upon a precedent Conviction, that is good, for a Fault in the Warrant. The Opinions in the Books are different where the Fine is to be set; in the Case of the Warden of the *Fleet* it was held, that if the Justices do not set a Fine, and the Proceedings are removed by *Certiorari*, this Court may not set the Fine, but the Justices ought to set it in a reasonable Time. I never could learn by what Power this Court could set a Fine, and I am at a Loss how to collect and apply the Statutes which my Brother *Whitacre* has cited. The Justices of Peace must set the Fine, and no Man can be committed indefinitely till he has made Fine by I do not know who, nor when, but till the Fine is liquidated; and the Justices are they who can compleat the Judgment. The Opinion of *Lambard* is very extravagant, and in the Case of the King against *Sutton*, upon Debate the Court quashed the Conviction upon this very Exception. The Conviction cannot be compleat till the Fine and Ransom be paid; they cannot commit for the force, for what then can they? Why for the Fine which shews that the Commitment is only a Security for Payment of the Money, and therefore they cannot commit before the Fine is set. It must be quashed.

Mr. Justice *Probyn:* I do not think it necessary the Justices should fix the Fine at the Time of the Conviction. The Case of *Bracy* was a Commitment by the Commissioners of Bankrupts, for not answering Interrogatories, until he should be discharged by due Course of Law, and the Commitment was held void; because it should have been in this Stile, "Until he should answer the Interrogatories," and for that Reason the Party was discharged. 5 *Mod.* 309. The Court over-ruled all the Exceptions after it had been thrice argued, except that of the Fine which they held to be a good Exception, for they unanimously held *the Court of* King's Bench could not impose the Fine, but the Justices must do it, and as the Justices had not set a Fine, the Commitment was illegal; and the Defendant having been bailed by Consent, appeared upon his Recognizance, and was discharged upon Motion.

Hilary, First of *George* the Second.

The King *against* Channel.

THE Defendant was indicted, for that he did unjustly and unlawfully take and detain forty-four Pounds of Wheat, out of three Bushells he was to grind, and this was laid to be done with Force and Arms, and against the Peace.

Mr. *Fortescue* objected, Here is no Force set out, and as it is a Matter of a private Nature, it is more proper for a Civil Action than for an Indictment. 2 *Keb.* 391. 1 *Mod.* 71. 1 *Sid.* 208, 9.

Chief Justice: Whether this Matter be indictable or not, the Indictment now before us is not well laid; neither do I see that it is an indictment, for it does not charge that the Defendant detained the Wheat for unreasonable Toll, nor that he took it as Toll, but only that he keeps and detains so much of your Wheat; this sure is more proper for Trover or Detinue. Upon Demurer Judgment was given for the Defendant.

Trinity, Second of *George* the Second.

The King *against* Mountague and others.

MOVED for a *Mandamus* to be directed to the Justices of Peace to put in Execution the Statute 8 *H.* 6. *c.* 9. of forcible Entries, upon an Affidavit that the Entry was by Force, and that the Justices refused to proceed. The Court said that the Writ had been often granted on the same Reason in other Cases, and a Writ was granted absolutely; *Hilary* 2 *Geo.* 1 a *Mandamus* was granted, directed to the Justices of *Derby*, to put in Execution, the Statute 1 *Geo.* 1. *c.* 14. to Order the County Treasurer to pay Constables Expences and extraordinary Charges; *Mich.* 6 *Geo.* 1. a *Mandamus* was sent to the Justices of *Cheshire*, to reimburse the Surveyors of the Highways according to 3 and 4 *W.* and *M. c.* 12. *Hil.* 8 *George*, a *Mandamus* was granted to order Alderman *Barker* to make a Warrant of Distress for the Poor's Rate; *Easter* 8 *George*, *Mandamus* was sent to Sir *Thomas Clarges*, to pass the Overseers Accounts according to 43 *Eliz. Easter* 8 *George*, *Mandamus* to the Justices of *Nottingham* to appoint Overseers in an extraparochial Place. 1 *Vent.* 187. *Comberb.* 203. *The like Writ* had been granted *Mich.* 2 *Geo.* 2. the King against *Long*, *Comberb.* 483.

Easter, First of *George* the Second.

The King *against* Wood.

THE Defendant was Indicted for a forcible Entry, and an Exception taken to it, because it was not laid that the Premisses set forth in the Indictment were the Prosecutor's, Freehold, for the Statutes 8 *H.* 6. and *R* 2. extend only to Freeholds; the want of which was alledged to have always been fatal in an Indictment of this Nature, particularly in the Case of the King against *Sharrington;* for perhaps it may only prove an Estate at Will, to which none of the Statutes extend, 1 *Vent.* 89; and it was answered that this Exception would be just if the Indictment was brought on the Statute, but that in Indictments brought at Common Law it was not necessary; so is the Case of the King against *Dier;* and the Court was of the same Opinion, and the Exception was over-ruled.

Michaelmas, Twelfth of *George*.

The King *against* Sir Willian Lowther.

MOVED for an Information in nature of a *Quo Warranto* against the Defendant, to know by what Authority he claimed to have a Coney Warren; several Affidavits were made of the Prejudice the Warren was to several Persons in the Neighbourhood, and likewise that it extended a-cross the King's Highway, which was the Circumstance chiefly insisted upon to prevail with the Court to grant the Information. *But the Court denied* the Motion, because it was a Matter of a private Right, and therefore proper to be tried in another manner.

The same Term.

The King *against* Kirby.

MOVED to quash an Indictment found against the Defendant for taking and carrying away Conies contrary to the Statute, upon two Exceptions.

1. This is not a Matter cognizable before the Sessions, because by the Statute 22 and 23 *Car.* 2. one Justice upon Complaint may correct such an Offence as is here charged, but the Sessions have nothing to do with it, except it comes before them by Appeal.

2. The Offence is laid to be done in *Killinghall* aforesaid, but no Mention is made before of *Killinghall. Cro. Car.* 464, *Chomley's* Case. The Defendant was indicted for assaulting *A. B.* in the Church of *Shoreditch* aforesaid; an Exception was taken in Arrest of Judgment, because the Offence was alledged to be done in the Church of *Shoreditch* aforesaid, and *Shoreditch* was not named before; and there the Court held the Indictment to be void. And here a Rule was made to shew Cause.

Hilary, Twelfth of *George.*

The King *against* Buck.

THE Defendant was indicted for killing an Hare with Greyhounds contrary to the Statute. Upon Motion this Indictment was quashed, because the Act of Parliament, which makes this an Offence, does not give a Remedy by way of Indictment, but appoints a particular Method of Punishment in a Summary way before a Justice of Peace.

The same Term.

The King *against* Millet.

MR. *Bonwick* moved to quash an Indictment for keeping a Gun to destroy the Game, not being qualified, upon this Exception, that the Indictment concludes contrary to the Statute; but the Statute orders the Offender to be punished, not by Indictment, but a Justice of Peace by his own Warrant may cause the Gun to be seized, and fine the Offender. Shew Cause.

Trinity, Twelfth of *George.*

In the King's Bench in Middlesex.

Hill *against* Bateman.

THE Defendant *Bateman* being a Justice of Peace, had convicted the Plaintiff for destroying Game; it was proved the Plaintiff had Effects of his own which might have been distrained, and were sufficient to answer the Penalty he had incurred, yet the Defendant sent him immediately to *Bridewell*, without endeavouring to levy the Penalty on his Goods. And an Action of Trespass and false Imprisonment being brought against *Bateman* for this Commitment, the *Chief Justice* was of Opinion the Action well lay; and it was agreed where Actions of this kind are brought against Justices of the Peace, they are obliged to shew the Regularity of their Convictions; and the Informations laid before them, upon which the Convictions are grounded, must be produced and proved in Court.

The same Term.

The King *against* Chipp.

THE Defendant was convicted upon the Statute 4 and 5 *W.* and *M. c.* 23. upon an Information for killing three Hares, not being duely qualified.

Mr. *Filmer* for the Defendant took several Exceptions to the Conviction.

The *First Exception* was, That the Information which was set forth in the Conviction, was insufficient to warrant the Conviction, for the Information only recited that he was an inferior Tradesman, but did not shew that he had wasted his Substance, or that he was a dissolute Person, which are the Words of the Statute; and therefore it did not appear by this Conviction that the Defendant was such a sort of Person as was intended by the Statute, for he might be an inferior Tradesman, and yet have sufficient Estate to qualify him to hunt, etc.

Second Exception; That it was not any where set forth in the Conviction that the Defendant did unlawfully hunt, and for any thing that appears in this Conviction, the Defendant might have brought the Hare, and hunted and killed it in his own Yard, which would have been lawful.

Third Exception; That the Conviction set forth that Information was given to *J. P. Justice of the Peace*, but did not say then a Justice; he might be a Justice at present, and not at the Time of the Information.

But the Court over-ruled all the Exceptions, and to the first they said, That the Statute was in the Disjunctive, *viz.* inferior Tradesman or dissolute Person, and therefore saying the Defendant was either of them was sufficient, for he by that comes under the Description of the Person meant in the Statute, and as such the Act prohibits him to hunt, and the Restraint in the Act makes the Offence. To the second Exception the Court said, The Statute forbids such Persons as the Defendant to *hunt at all*, and made it criminal for such Person to hunt generally. And in this Statute there is *a Distinction betwixt lawful* and *unlawful Hunting*, as there is in the Statute of Deer-dealers, and they agreed that in a Conviction for Deer-Stealing, it must be set forth that the Defendant did unlawfully hunt, but in the *present Case it need not*, because there is *no such Distinction*.

To the third Exception the Court said, That the Conviction set forth that Information was made to *J. P.* being one of the Justices, etc. which must be intended he was one at that Time, and it was sufficient without saying *then;* and they affirmed the Conviction.

Easter, Thirteenth of *George* the First.

The King *against* Wyat.

THE Defendant was convicted on the Statute 5 *Anne*, for hunting and killing Game with two Greyhounds; on Demurrer, Mr. *Fazakerly* excepted to it, because the Offences are distinct, and there ought to have been several Convictions for killing with each Greyhound, but instead of that, this is one intire Conviction for five Pounds. This was over-ruled as an immaterial Exception.

2. The Statute appoints that one Half of the Penalty assessed on the Conviction of the Party, shall be distributed to the Poor of the Parish, and by what appears no Distribution can be made in this Case, for no Parish is mentioned upon the Record where the Fact was done, but only a Vill.

Mr. Justice *Fortescue:* There need be no Distribution set forth on the Record, for the Conviction is compleat without it.

Mr. *Wilbraham* on the other Side: This Objection would hold if the Offence had been done in an extraparochial Place.

Mr. Justice *Fortescue:* If this Vill mentioned in the Record is a Parish, then the five Pounds shall be distributed to the Poor living there; if it is not a Parish, then the Informer shall have the whole.

3. This Conviction appears not to be founded on a legal Evidence, for the Person on whose Testimony the Conviction is taken, is named to be of the Vill of *Mothram* where the Fact was done, and consequently he hath an Interest in the Conviction, because one Half of the Penalty is to go to the Poor of the Parish, so it is plain he is concerned in Point of Interest within the Meaning of this Act; and it is like the Case in a Suit for Tithes in the Exchequer, where if a Man is said to be of the Parish, his Deposition is rejected.

But *by the Court:* There is no Weight in this Exception.

And *Chief Justice* said, it is of no Moment to say the Witness is an Inhabitant of the Vill where the Fact was done, for he might be a Servant, and then his Evidence will support the Conviction below; and as to the second Exception we will intend the Parish and Vill to be Coextensive, and the Conviction was affirmed.

N. B. If the Conviction be made upon the Evidence of the Informer, who is intitled to any Part of the Penalty, the Conviction is void, because it is founded upon illegal Evidence, which Point has been resolved more than once.

Michaelmas, First of *George* the Second.

The King *against* Wicker.

THE Defendant was convicted for keeping Nets and Dogs to destroy the Game, in the Penalty of five Pounds.

Sir *John Strange*, on Demurrer, took these Exceptions, *viz.* 1. The Defendant is said to be of the Parish of *Buckingham*, and kept the Nets and Greyhounds for the Destruction of the Game in the Parish of *Westwickham*, but does not say that he kept the Nets and Greyhounds in *Westwickham*, which is a material Fault in the Conviction, because the Forfeiture goes to the Poor of the Parish where the Offence is done, and in this Conviction the Defendant is charged with two offences, *viz.* Keeping Nets and Greyhounds, but the Conviction is single for five Pounds only, whereas he should be convicted for each; and the Objection to this Defect in the Conviction is of some Force, because the Defendant cannot know which of them to plead in Bar. The Court over-ruled both these Exceptions, and the last was set aside on the Reasons given in the Case of the King against *Lingoe*, lately in this Court.

3. The Conviction does not adjudge the Defendant unqualified. But the Court held the Disqualification was charged home against the Defendant in the Information; for the Justices adjudge him guilty of the Premisses charged therein. Conviction affirmed.

Michaelmas, Second of *George* the Second.

The King *against* Stone.

THE Defendant was convicted for Deer-Stealing, and upon Demurrer an Exception was taken to it, that the only Witness was the Informer, who was intitled to a Part of the Reward or Penalty; and for this Reason the Court set it aside. In *Mod.* 3. 114. *Jenings* against *Hankeys*, the Defendant was convicted on the Statute of *Car.* 2. by the Oath of the Informer, and this Exception was taken. But it was answered, the Statute gives Power to convict on the Oath of a credible Witness, and such is the Informer. Upon the Statute for suppressing Conventicles, the Informer who had Part of the Penalty, was allowed a good Witness, and there the Court put the Case of a Man robbed, who swears for his own Interest against the Hundred, and would not quash it.

Easter, Tenth of *George*.

Shipton *Qui tam*, *against* Hobson.

AN Information was exhibited against the Defendant upon the Game Acts, *viz.* 5 *Anne*, *c.* 14. §. 2. 9 *Ann. c.* 15. 8 *Geo. c.* 19. and there were two Counts in the Information one for five Pounds for keeping a Gun, and another for ten Pounds, for killing two Partridges; a Verdict was found for the Prosecutor, as to the five Pounds mentioned aforesaid, and as to the Residue, for the Defendant. And now the Defendant moved in Arrest of Judgment, because the Finding of the Jury for the Prosecutor, as to the five Pounds, was uncertain, for it did not shew particularly upon what Count it was found, and the Count upon which it was found ought to be specified, for perhaps it may be found upon a Count which is insufficient; but unless it appears upon what Count, the Defendant may take an Advantage of the Insufficiency; and by this Verdict it does not appear whether the five Pounds was given for killing the Birds, or keeping the Gun.

By the Court: The Finding doth sufficiently ascertain it to the Count which is for the five Pounds, and the Plaintiff had his Judgment.

Mr. Justice *Fortescue* said, This is the same thing as if twenty Pounds had been demanded upon several Bonds, and the Jury had found for the Plaintiff as to five Pounds Parcel of the twenty Pounds; and for the Defendant as to the rest; this Finding would have been good without ascertaining upon which of the Bonds the five Pounds for the Plaintiff was found.

Hilary, Twelfth of *George*.

On a Trial at Bar in the Court of King's Bench.

Anonymus.

AN Information was exhibited against the Defendant, for that *A. B.* and other Malefactors, did kill Deer, sometimes five, six, or eight in a Week, amounting in all to eighty-one Deer in *Yardley Chase*, belonging to the Earl of *Northampton*, and that they did fly to *Olney* in *Buckinghamshire*, the Seat of the Defendant, and that he being a Justice of the Peace did receive Part of the Venison, and gave them Money for it, knowing it to be stole, and in Breach of his Office did neglect to prosecute and bring the said Offenders to Justice, in Contempt of our Sovereign Lord the King, his Crown and Dignity.

The several Facts charged in the Information, were proved fully upon the Defendant; and in another Term the Defendant received the Judgment of the Court, and was fined four hundred Pounds.

Michaelmas, Thirteenth of *George*.

The King *against* the Justices of the Peace of Cardigan.

A MOTION was made to quash a *Certiorari* which had removed some Orders made by the Justices concerning the Highways, for that by the Statute 3 and 4 *W.* and *M. c.* 12. 1 *Anne, c.* 18. a *Certiorari* does not lie to remove *any Indictment out of the proper County*, but all Proceedings, touching the Highways, are to be determined finally by the Justices in the County. And a Rule was made to shew Cause.

The same Term.

The King *against* The Inhabitants of Ashby in the County of Leicester.

MOTION for Leave to file an information against the Defendants for not repairing the Highways, being in a very ruinous Condition.

Mr. Justice *Fortescue* said, That he had known Informations granted on this very Occasion, and there is great Reason that it should be so, because it would be a Means, as the Expence is greater in the Crown Office, to compel them to take Care of their Roads, for the Indictments at the Assizes have seldom the Effect to oblige them to repair, the Fine for the most part being small; besides those Indictments cannot be removed into this Court.

Mr. Justice *Reynolds* thought the Act of Parliament had retained the Court to grant an Information on this particular Instance; however they made a Rule to shew Cause.

Trinity, First of *George* the Second.

The King *against* The Inhabitants of Harrow.

THEY were indicted for not repairing their Highways. To this Indictment they pleaded a private Way; now they moved to plead the general Issue, Not Guilty, which the Court refused.

Michaelmas, First of *George* the Second.

The King *against* Hubert.

THE Defendant was obliged to repair an Highway in *Norwich*, by reason of his Tenure, and for not repairing this way, an Information was moved for against him, and a Rule was granted to shew Cause, and afterwards the Rule was made absolute. *Show.* 116. 1 *Sid.* 140.

Note; For the Form of a Conviction, by the View of a Justice of Peace, for not repairing the Highways, which he is to return to the next Sessions, and the Order thereupon, see *Keyling* 33.

Hilary, First of *George* the Second.

The King *against* Eachard.

A MOTION was made to quash an Indictment, but opposed, because it related to the Highways, wherein the Defendant was charged with not working for the Amendment of the Ways of the Parish, which are not the Highways; and *Ways generally* will not strictly comprehend the Highways. In *Salk.* the Queen against *Jones*, 379. the Defendant was indicted for a Cheat, and the Indictment was quashed, though it was for those Artifices which are not of the common Sort, because it did not appear to be a Cheat set forth with false Tokens. Another Exception was, that the Statute *Car.* 2. prescribes a different manner of Punishment, to be inflicted by the Justices of Peace; and for these Reasons the Indictment was quashed.

Michaelmas, Eleventh of *George.*

The King *against* Blackfeller.

THE Defendant, a Surveyor of the Highways, was indicted for suffering the Highways to be out of Repair. Upon Demurrer, the Indictment was held to be ill laid, for there being a Statute which provides a particular Remedy in such a Case, the Defendant could not be indicted. 1 *Vent.* 63. the King against *Millard*, *Hil.* 2 *George* 2. the King against *Pensax*, *Hil.* 2 *George* 2.

Easter, First of *George* the Second.

The King *against* Mash.

MOTION to quash an Indictment, and the Offence charged therein was for digging a Ditch a-cross the Way, in a certain Meadow-Ground adjoining to the Highway. Two Rules were laid down whereby to justify the Motion. 1. If this had been an Offence done in the Highway, or if it had been charged to be a Nusance, in either of these Cases the Rule was, It could not be moved to quash it; but from the very Nature of the thing as laid in the Indictment, it cannot be any Offence done in the Highway, and therefore this Case falls not under either of those Rules, and the Motion is proper, *though quashing be an Act of Favour.*

But *the Court* held, That the Fact was well described, and if you will bring the Merits before us, you may demur to the Indictment.

Easter, Eleventh of *George.*

The King *against* Norwall.

THE Defendant was indicted for refusing to exercise the Office of Surveyor of the Highways, being legally chosen according to the Statute 3 and 4 *W.* and *M.* and the Indictment was quashed, unless Cause. 1 *Vent.* 107, 344.

Michaelmas, Twelfth of *George.*

The King *against* Barnsey.

THE Justices made an Order on the Defendant to pay the Proportion of the Charge assessed towards the Repairs of a Bridge; he moved to quash it, because the Order does not say in what County it is, nor that it is a publick Bridge. Quashed.

Trinity, Twelfth of *George.*

Anonymus.

IN the Case between the King and the Trustees, for repairing the Road between *Markethar-brough* and *Loughbrough*, in the County of *Leicester*, appointed by Act of Parliament,

some Orders of theirs being removed by *Certiorari*, a fatal Exception was taken to them, That they had taken Notice in the Orders of an Appointment by an Act of Parliament to repair the Roads between *Harbrough* and *Loughbrough*, but had omitted to insert *Market*, which shewed they had no Authority, and was held a Variance. *Salk.* 452.

Hilary, Third of *George* the Second.

The King *against* Oakley.

MR. *Wheat* moved for a *Mandamus* to be directed to *J. S.* a Justice of the Peace, to put in Execution the Statute 5 *Geo.* 1. *c.* 12. §. 1, 2. which enacts, "That no Waggon, travelling for Hire, shall be drawn with more than six Horses, on Forfeiture of all the Horses above six, with all Accoutrements, to the sole Use of him who shall seize, and the Person who shall seize shall deliver the Horses to the Constable of the next adjoining Town, who is required to keep them safe, till the Person who seized shall make Proof on Oath before some Justice of the Peace of the Offence committed, and the Justice shall issue out his Precept to such Constable immediately to deliver the Horses so forfeited to the Party who seized, for his sole Benefit." Now the Justice would not issue out his Precept to the Constable to deliver the Horses seized, and therefore the Man who had seized made this Application for a *Mandamus*.

But *the Court* thought it should appear to them that Oath had been made before the Justice of the Offence committed, for they could not force him to issue his Precept; but singly to administer the Oath. Rule to shew Cause.

Hilary, Eighth of *George* the Second.

St. Mary Callender *against* St. Thomas.

WILLIAM WEST, settled in *St. Thomas* in *Winchester*, came into the Parish of *St. Mary Callender* in *Winchester*, in 1719, under a Certificate from *St. Thomas*, and in 1721 was chosen and legally placed one of the Constables of the City of *Winchester*, and served the Office for a Year, and lived during that time in *St. Mary Callender*, and executed his Office through the whole City; in 1727 he took *Joseph Talmash* his Apprentice; and the Question was, Whether the Apprentice gained a Settlement by serving his Master in *St. Mary Callender*, where two Justices had removed him; but the Sessions on Appeal discharged their Order.

Mr. Serjeant *Eyre* insisted, That the said *William West*, by serving this Office of Constable for one Year, had gained a good Settlement in *St. Mary Callender*, and thereby avoided his Certificate, and consequently the Apprentice, agreeable to the Case of *Karsington* in *Oxford*, and *Holy Trinity* in *London*, which was in *Hilary* 2 *George* 1. where a Certificate-Man being chosen Tithingman, served the Year, though not sworn in till Half the Year was expired, which the Court held a good Settlement; for the Parish by choosing him manifested their Opinion of his Sufficiency.

That the 3 and 4 of *W.* and *M.* of annual Offices, is the first and strongest Act, *Hil.* 7 *Geo.* 1. the King against the Inhabitants of *Mitcham*, Collector of Births and Burials, a good annual Office; Queen against the Inhabitants of *St. Mary's Reading*, Warden a good annual Office; and it was said in that Case, that a Collector of the Land Tax would do.

The 3 and 4 *W.* and *M.* has been favourably expounded.

Renting ten Pounds *per Annum* in two Parishes, *Michaelmas* 9 *George* 1. the King against the Inhabitants of *Broxford*.

Admitted it must be an annual Office, but not necessary to be parochial, if it extends only to an Hamlet, it will do; the present is a larger Office than necessary for a Qualification, therefore the Order of Sessions should be quashed.

Mr. *Chute* on the other Side agreed, if the Question was on the executing an annual Office only, and the Certificate Person's Settlement was in Question, it would be against him, agreed the Cases as cited on the other Side, and that *St. Mary's Reading*, and *St. Lawrence*, *Hilary*

9 *Anne*, was very strong; but the Question arises not on the 3 and 4 *W.* and *M.* but on the Construction of the 12th of Queen *Anne*, which was intended to prevent the Settlement of Apprentices to Certificate Persons. 9 and 10 *W.* 3. is the Act which settles this, unless superseded by the 12th of Queen *Anne*.

Exception; not resident in the Parish for one whole Year, but that was right in the Order; then 12 *Anne* declares the Apprentice of a Certificate-Man shall not gain a Settlement; the first Point is, Whether 9 and 10 *W.* 3. requires the Office to be parochial; the 3 and 4 *W.* introduces those Offices in lieu of Notice in Writing; then the 9 and 10 *W.* comes to settle some Doubts arising on the former Act, but did not intend to defeat a Certificate, unless the Officers of the Parish had Notice. The Word *Town* in the Case of *St. Mary's Reading*, was much relied on by Lord *Parker*, and the Person not a Certificate-Man.

The Question is solely on 9 and 10 *W.* which he argued should be a parochial Office. The Warden in *St. Mary's Reading* is in Nature of a Tithingman, which is a Hamlet or Parish Officer; insisted in this Case the Parish was to be concluded without their Privity, and that this Person might have been removed, and therefore was not such an Officer as the Act intended.

Lord *Chief Justice:* On the 3 and 4 *W.* 3. the Point is what shall be equivalent to Notice in Writing; on this Act a publick annual Office, though not parochial, has been held sufficient.

Mr. *Chute:* The Certificate Act 9 and 10 *W.* makes the Person irremovable till actually chargeable; so that Notice is nothing in that Case, and here the Person is appointed, not by the Parish, and yet as soon as the Year expired may be absolutely concluded; which was hard.

To which Mr. Serjeant *Eyre* replied; These Acts have been all liberally expounded, and that Renting ten Pounds a Year in different Parishes was a good Settlement, and that a parochial Office was no where mentioned in the Acts, and that the Case of the Tithingman was of a Certificate Person.

Lord Chief Justice said he would look into the Cases, thought if the Cases had not been so determined he should think a parochial Office intended, but he should not be for shaking the Authority of them.

Mr. Justice *Lee* thought the Case of a Certificate-Man not to be distinguished, and if it should be construed a parochial Office, to avoid a Certificate, it would be hard; for as he comes into a Parish against their Will, it is not likely they will appoint him to a parochial Office, and so he will never gain any new Settlement.

Mr. Justice *Probyn:* A Church-Warden named by the Parson, and a Parish Clerk named by the Parson, both good; whence he argued, that a Parish might be concluded, though not by their own Act.

Mr. Justice *Page:* If this Office should prevail, then perhaps he would gain a Settlement in ten Parishes at once, for over so many his Office of Constable may extend; this Office is given him by the Corporation, the Parish no way consenting, and it would be hard they should be concluded by it; therefore it was adjourned, to look into Cases, and afterwards in *Easter* Term following Mr. *Chute* said, That the Conclusion of the Justices in this Order is wrong; he desired to consider the Series of the Statutes as they stand; on the 13 and 14 *Car.* 2. a Person could not be removed from his Freehold, and there are Cases whereby a Person may gain a Settlement out of all the Acts.

The Statute of *James* 2. requires Notice.

The 3 and 4 *W.* and *M.* ascertains the Measure of that Notice, and in *Abbots Langley* and *Aldenham*, it was held that nothing amounted to it.

The 8 and 9 *W.* 3. amounts to an Estoppel against the Parish giving a Certificate.

The 9 and 10 *W.* 3. narrows the Notice, and Notoriety was not the Question; a Certificate signed is Notice, and Renting ten Pounds a Year must intend that such a Person is dispaupered.

The 3 and 4 *W.* and *M.* is Executing some annual Office in such Parish, but here he was City Officer, and as much at large as the Reve of a Manor.

As to the Case of *Karsington* and *Trinity*, a single Case is not to weigh against the general Reason of the Statutes.

Sir *Thomas Abney:* Renting Land in two Parishes, amounting to ten Pounds, will avoid a Certificate, the King against the Inhabitants of *Broxford, Mich.* 9 *Geo.* 1. the King and the Inhabitants of *Melton, Easter* 4 *Geo.* 2. marrying a Copyholder.

Admitted in the Case of *Karsington*, the original Order was quashed, because no Complaint, but the Court first gave Opinion on the Merits.

Mr. Justice *Lee:* Upon the Argument of that Case the Court was strongly inclined that it was a Settlement, but being a new Case, a second Argument was ordered, in which Lord *Parker* directed the Counsel to speak to that Point, Whether he was legally placed in the Office, because of the Point of his not being sworn in till he had served Half a Year; but in another Term the original Order was quashed, because want of Complaint, and nothing more, was said of that Point.

Lord *Chief Justice:* The Question is, Whether the Apprentice gained a Settlement by serving this Master, which immediately depends on the Statute 12 *Anne, c.* 18. and the Question is, Whether the Master by any thing has discharged himself of this Certificate? The first Act relating to Certificates is the 8 and 9 *W.* 3. *c.* 30. then it was thought reasonable that some Acts should give a Certificate-Man a Settlement, or make him capable of it, which is the Reason of the 9 and 10 *W.* 3.

The next is on the Statute 3 and 4 *W.* and *M.* on the Words annual Office, there seemed to me to be a Difference between a Certificate-Man and others, because not removeable till actually chargeable.

The Case of *Karsington* being now more fully stated, appears to be on a Certificate, and the Point directed to be spoken to, whether legally placed, shews the Court had no Doubt but it would gain a Settlement.

The 3 and 4 *W.* and *M.* ascertains what Notoriety shall be.

Office in any Town or Parish is not restrained to Parish Offices; the Word *Town* being dropped in the Act makes no Difference, for it must be understood a Town in which a Person can gain a Settlement.

Thought, on the Case of *Karsington*, the Construction of the Acts was plain, and that the Master gained a good Settlement in the Parish to which the Certificate was given, and consequently the Apprentice.

Mr. Justice *Page* agreed.

Mr. Justice *Probyn:* The whole City joined in the Election of this Constable, and consequently the Parish in which he lived, could not see how this could be taken different on Certificate, from the 3 and 4 *W.* and *M.* the Constable is not a parochial Officer, yet gains a Settlement; so Tithingman, Reve, etc.

Mr. Justice *Lee:* Courts have always extended as far as they could in Favour of Settlements, and the Case of *East Woodhay* and *Burclear* was as cited, the Court said, that the 9 and 10 *W.* 3. was not an explanatory Act, but a new Law, and has enlarged the Case of a Certificate-Act, and the Case of *Karsington* was expressly to this Point. It is not necessary to be a Parish Officer, but Executing any annual Office in a Parish; no Reason for putting any Restriction on a Certificate-Man, but the same in his Case as in that of any other Man.

The Court made the Rule absolute to quash the Order of Sessions, which had discharged the Order of two Justices, who had removed the Pauper to *St. Mary Callender*, and affirmed the Order of the two Justices.

Hilary, Sixteenth of *George* the Second.

The King *against* The Township of Stansfield in the Parish of Heptonshall.

ORDER of two Justices to remove *Jonathan Barret*, his Wife and Children from *Stansfield* to *Spotland;* and upon Appeal the Sessions discharge this Order, and state specially, That *Jonathan Barret* the Father was last legally settled at *Stansfield*, and came to *Spotland* in *Lancashire*, by Virtue of a Certificate, That while he was there Sir *Richard Asheworth* let him for nine hundred and ninety-nine Years, twenty square Yards of Land, and he

built upon it, and in 1730 *Jonathan Barret* assigned to one *Horsehall* for Sixteen Pounds ten Shillings, and Sir *Richard Asheworth* leased another Croft to *Horsehall;* that *Barret* having Money left to him by an Uncle, agreed with *Horsehall* to re-assign to him for forty-seven Pounds; that in 1738 *Barret*, by way of Mortgage re-assigned to *Horsehall* for forty-five Pounds; that *Barret* and his Family were sent by a Pass from *Manchester* to *Stansfield*, and before any Appeal to the Pass two Justices removed him. In Support of the Order of Sessions it was argued, that these Persons were settled in *Stansfield;* secondly, if not, yet there ought to have been an Appeal from the Pass Order. That no Settlement could be gained by this Purchase appears from the 9 and 10 *W.* 3. *c.* 11. which is explanatory of the 8 and 9 *W.* 3. and fixes it to two Acts only to gain a Settlement, which excludes this, which is the Act of the Party only.

On the other Side it was argued, That though he mortgaged the Premises, yet that does not make any Difference, because he lived in it three Years before, and there is not any Pretence of Fraud in taking an Estate for so long a Term; besides no Fraud is stated; but is it stated that the Premisses are worth sixty-three Pounds to be sold? this would be a clear Settlement in *Spotland*, in the Case of a Person not certificated.

If an Estate descends to a Certificate-Man, it gains him a Settlement, because it is by Operation of Law, and not by an Act of his own; and as this Statute has been laid open in Cases of Descents, it ought to be so in Cases of Purchases.

It is impossible to imagine that the Legislature intended these Passes should be conclusive, because by the 13 and 14 *Car.* 2. *c.* 12. in cases of Removal must be two Justices.

So in Passes to remote Places very inconvenient, if when sent the Place is mistaken.

Lord *Chief Justice:* The Sessions have not only stated the Merits, but this Pass-Order, and have adjudged the Settlement at *Stansfield*. But it does not appear whether the Adjudication was upon the Merits, or for want of an Appeal to the Pass. I take it that the Statute 8 and 9 *W.* 3. has not been so strictly adhered to as has been contended for. For it has been held to gain a Settlement in Descents, Devises and Purchases. On the 13 and 14 *Car.* 2. *c.* 12. the Construction has been, that let the Value be what it will, a Person cannot be removed from his Own; and it seems to be the same upon the Certificate Act, for if he is not removable within the 13 and 14 *Car.* 2. he is not removable on the Certificate Act.

Mr. J. *Wright* thought this not a new Case, and that it had been settled that a Certificate-Man by Purchase gains a Settlement, and cited the King against the Inhabitants of *Burclear*, *Easter* 5 *Geo.* 1. and *Mursley* and *Grandborough*, *Trinity* 4 *Geo.* 1.

Mr. J. *Denison* thought it had been determined upon the Merits that a Certificate-Person shall gain a Settlement by Purchase, in the Time of his late Majesty; and though the 9 and 10 *W.* 3. is an explanatory Law, yet this Case is the same as on the Statute 13 and 14 *Car.* 2. perhaps there were other Cases than the two that that Statute intended to prevent, but it seems to be *Casus omissus*, and so intended by the 9 and 10 *W.* 3.

Trinity, Eighth and Ninth of *George* the Second.

Barton Tuff *against* Happersburgh.

A POOR Woman, after the Death of her Husband, removed from *Barton Tuff*, the Place of the Settlement of the Husband, to a Copyhold Estate of her own at *Happersburgh*, and took with her her Daughter of thirteen Years of Age; and the Question on an Order specially stated was, Whether the Daughter by this derived a new Settlement under her Mother.

It was resolved by the Court, that there was not any Difference between a Settlement derived from the Father or Mother; but wherever a Child would have gained a Settlement under the Father, if he had been living, such Child would do the same under the Mother; and the Court quashed the Order of Removal to the Settlement of the Father, and that of the Sessions confirming the same.

Trinity, Thirteenth of *George* the Second.

St. Neotts *against* St. Cleer.

A PAUPER at *St. Neotts* was hired, and served one Year, and returned to *St. Cleer*, where he had a joint Freehold with his Mother, and lived there backwards and forwards, but not forty Days at a time, but more in the whole.

Two Justices remove him to *St. Cleer*, and on Appeal Sessions discharge that Order; and on a *Certiorari* brought in the King's Bench it was moved to quash the Order of Sessions, and in Support of it argued that he had sold the Estate three Years ago, and though he could not be sent from this Estate, yet by selling it he had parted with that temporary Right.

Court said, This depended on 13 and 14 *Car.* 2. and that forty Days Inhabitancy together was not requisite, and that the Pauper was well settled at *St. Cleer*, for there was a Time when by a Residence of forty Days he could not be removed from thence, therefore the Order of Sessions was quashed, and that of the two Justices confirmed.

Trinity, Tenth and Eleventh of *George* the Second.

Wodworthy *against* Farrington.

A PERSON possessed of a Lease of a Cottage, for Years determinable on Lives, had two Sons; on his Death the eldest kept Possession, the other took the Goods as his Share, but no Administration taken out on the Expiration of the Lease. Two Justices made an order of Removal, and an Appeal was to Sessions; and after the first Order, and before the Sessions, he took out Administration; the Sessions reversed the Order of the two Justices; and the Question was, Whether living in the House, and not having Administration, gained a Settlement?

Court held it did not make a Settlement without administring, and the taking it after the Lease expired gave him none; therefore the Order of Sessions was quashed, and that of the Justices confirmed.

The same Term.

Buckley *against* Benhall.

ON a special Case stated, the Question was, Whether the Pauper, who was a Certificate-Person, had gained a Settlement by renting a Wind-Mill in *Benhall* of fourteen Pounds *per Annum*, (that is) whether it was a sufficient Tenement within the Statute, though it was admitted that in *Salkeld* 536, a Water-Mill was held a Tenement, and the Renting of it clearly a Settlement within the Statute. Yet it was objected in the present Case, that it appeared while he rented it under a Lease he gave Security for the Rent, and for the last three Years he was only Tenant at Will; now the Foundation is the Credit of the Party renting, and that fails in this Case. On the other Side it was argued, that he that has Credit to give Security has Credit to pay Rent; the King against the Inhabitants of *St. Mary Guilford Hilary*, 8 *Geo.* 1. Renting a Wind-Mill generally was held good.

Court: No Difference what sort of Mill it is, but it will gain a Settlement, and the giving Security for the Rent does not alter the Case, and the Order of Sessions was quashed.

Hilary, Fourteenth of *George* the Second.

The Case of the Constables of Milborn Port.

THE Constables were appointed at a Court-Leet the 7th of *October*, but not then sworn; the Leet being adjourned to the 27th, then the Constables went and were sworn before Justices of the Peace.

Upon Motion for an Information, the Question was, Whether this was a good Swearing?

Sir *Thomas Jones* 212. *Salk.* 175. *Kitch.* Tit. *Court-Leet* 9. *Allen* 78.

Lord Chief Justice: In a Manuscript Report of Lord *Raymond* and another of Lord *King*, of that Case in *Salk.* it appears that the Court said, if a Steward neglects swearing Constables

at a Court-Leet and adjourns the Court, he must issue a Precept to them to be sworn before Justices, for they have Authority to do it as Conservators of the Peace at Common Law.

Therefore we are of Opinion that they were well sworn, which is the only Objection to them, and the Rule to shew Cause why an Information should not go, must be discharged.

Michaelmas, Second of *George* the Second.

Aldenham Parish *against* Tolchister.

SIR *John Strange* moved for an Information against the Overseers of the Poor of *Tolchister*, upon this Case: *A. B.* a poor Woman, had been removed by Order of two Justices from *Aldenham* to *Tolchister*, and the Overseers without appealing, from that Order prevail on the Woman for a Crown in Money, and a Pair of Shoes, to return to *Aldenham*, which she did accordingly, and was there delivered of a Child; this was said to be a Conspiracy to evade the Order, and that unless the Court would grant an Information, they had no other Remedy.

But *by the Court:* If an Information lies you may indict them, and refused to grant the Information.

And the *Lord Chief Justice* said, It was constantly held in Lord Chief Justice *Holt's* Time, that were a poor Person was legally removed, and afterwards, either by Stealth, or Contrivance of the Officers, got into another Parish, and was there delivered, the Child should be esteemed the Child of the Parish to which she had been removed, and not of the Parish where it was born.

The same Term.

The Case of the Parish of Luton.

A POOR Person had been removed by Order of two Justices; and upon Appeal to the Sessions of *St. Albans*, the Matter was solemnly debated by Council; and the Court being divided, the Justices were polled, and the Majority were for quashing the Order, and the Clerk of the Peace took the Minutes accordingly, and the Person concerned for the Parish of *Luton* had paid for the Order; the Court adjourned till five in the Afternoon, and upon the Justices meeting again without any Re-examination of the Matter, they ordered the Clerk of the Peace to alter the Minutes, and enter an Order for confirming the Order of the two Justices.

Upon this it was moved, that the Clerk of the Peace might answer the Matters of the Affidavit, having refused to draw up the Order first pronounced and paid for by the Parish.

But *by the Court:* The Clerk of the Peace has done his Duty, for he must obey the Justices in Sessions, and refused the Motion.

Easter, Second of *George* the Second.

St. John Baptist *against* St. Saviour Southover.

ORDER of Justices for the Removal of a Man, his Wife and *B. C.* and *D.* their Children. Quashed by Sessions for want of Form.

And now Sir *John Strange* was to shew Cause why the Order of Sessions should not be quashed, and he took an Exception to the Order of Justices, that the Ages of the Children were not expressed, nor was the Place adjudged to be the Place of their last legal Settlement. Agreed the Order naught as to the Children, but good as to Father and Mother.

And *by the Court* the Order was confirmed as to the Father and Mother, and quashed as to the Children.

Michaelmas, Third of *George* the Second.

The King *against* The Inhabitants of Strisestead.

TO an Order of Removal Mr. *Hussey* took two Exceptions;

1. That it did not appear, that the Justices who made the Order were Justices of the Peace for the County.

2. That it was set forth in the Order, that the poor Person was a Certificate-Person, and not said that he was become chargeable, but that he would be chargeable. Upon which a Rule was made to shew Cause, why the Order should not be quash'd.

N. B. The last Exception seems fatal, because by the express Words of the Act a Certificate-Person is not removeable till he is become agreeable.

Michaelmas, Fourth of *George* the Second.

The King *against* Lone.

THE Defendant was indicted for not taking upon him the Office of Constable, being appointed by the Ward-mote in *London*, and a Verdict generally was found for the King.

And now it was moved in Arrest of Judgment, that the Prosecutor had mistaken the Remedy, for he was to be amerced but was not indictable; that a Constable was an antient Officer at Common Law, and was appointable by the Leet. 8 *Co. Greesley's* Case. 1 *Salk.* 175. 1 *Rol. Rep.* 535. 1-2 *Rep.* 541. this is an Indictment before the Sessions, and the Justices have no Jurisdiction, but by the Statute 13 and 14 *Car.* 2. *c.* 12. where in Default of the Leet being held, the Sessions may appoint a Constable, but there their Authority is bounded. 1 *Salk.* 176. *Mich.* 8 *Anne*, the Queen against *Wheatcroft*, *Trinity* 2 *Anne*, *Hilary* 10 *Anne*, Queen against *Dacey*, *Easter* 11 *Anne*, *Trin.* 7 *Geo.* 1. King against *Beal*, *Hil.* 8 *Geo.* King against *Lovreign*, *Easter* 1 *George* 2. 1 *Bulst.* 174.

That the Time was laid to be on the 22d Day of *December* in the third Year aforesaid, and no Year of the King mentioned before, and a Rule was made to show Cause why the Judgment should not be arrested.

Afterwards in *Michaelmas* Term in the fifth Year of his present Majesty, Mr. *Reeve* came to shew Cause for the Prosecutor, and insisted that the Indictment well lies, for that this was an Offence against the Publick, and that there was not any other Remedy in this Court than an Indictment; that the Defendant was duely appointed, (which was admitted) by the Wardmote, who have not any Power of Fining, for they cannot so much as swear him, but being appointed by the Wardmote he is to be sworn by the Court of Aldermen. *Easter* 8 *Anne*, the Queen against *Jennet*, Indictment for refusing to take upon him the Office of High Constable, 3 *Keb.* 197, 230. Information for not taking upon him the Office of Constable, *Crawley's* Case, 1 *Cro.* 557, said in that Case, the Defendant should have been indicted, 1 *Syd.* 272. King against *Clerk*, *Mich.* 8 *W.* 3. *Comb.* 416. *Skinner* 669. admitted that 2 *Shore* 75, King against *Bettesworth*, seemed to be against this; Queen against *Dacey*, *Hilary* 10 *Anne*, appears to have been quashed, but not that it did not lie, but appears to be full of Faults, as an Indictment can be, being all in the Recital. As to the other Case, the King against *Beal*, that was an Order of Justices discharging a Constable appointed at the Leet, and it was quashed, because Justices have not any Power to discharge a Constable appointed; said as to the Rest of the Cases he could not find them.

Mr. Serjeant *Common* on the same Side: If an Indictment does not lie in this Case, there is no Remedy; the Leet indeed can swear in and fine, but the Court of Wardmote cannot swear in nor fine; but the Alderman whose Ward it is makes the Return to the Court of Aldermen, who can swear in. 5 *Mod.* 96. 1 *Syd.* 1 *Ventr*, 344. *Tremain's Entr.* 221. §. 6. These Cases he added to those cited by Mr. *Reeve*, to shew that Indictments had very frequently been brought in this Court. Queen against *Dacey*, *Hilary* 10 *Anne* does not appear to have been argued.

To all which it was replied, That it was not denied but that it was an Offence wherein the Publick was concerned; but it was denied, for that Reason, an Indictment would lie, unless there was no other Remedy at Common Law, and by the Statute of *Charles* an Amerciament is the proper Remedy; as to the Cases cited of an High Constable, that is different, for the High Constable is not subject to the Leet, but to the Quarter-Sessions, and not obeying that Court is a Contempt and indictable. That the Leet is the proper Place to elect a Constable. 1 *Rol.* 535. *Pl.* 12, 541. *Pl.* 5. 1 *Bulst.* 174. 8 *Co. Greesley's* Case, 1 *Salk.* 175. 13 and 14

Car. 2. *c.* 12. §. 15. gives the Jurisdiction to the Justices by Devolution, and no otherwise. *Salk.* 176. *Mich.* 8 *Anne*, Queen against *Wheatcroft*, *Trin.* 2 *Anne*, Queen against *Dummer* cited in the last Case. *Trinity* 9 *George*, King against *Beal*, *Hilary* 10 *Anne*, Queen against *Dacey*, *Easter* 11 *Anne*, an anonymous Case. Leet is the proper Place to elect and swear Constables, and that the Sessions cannot try a Custom, nor exercise any other Jurisdiction than the Act gives them.

Lord Chief Justice: Where a new Offence is made, and a particular Method of Punishment prescribed, that must be pursued, but where the Offence is an old one, and concerns the Publick, it is indictable. As to the Cases where only Rules have been obtained unless Cause, they were but trifling Authorities; but where Cases have been litigated, and Judgment therein given for the King, it is very strong, and was clear, this Indictment lies.

Mr. Justice *Page* was of the same Opinion, and said if a Person should be appointed by a Leet, who was absent, he is to go to the next Justice, and suppose he will not be sworn, perhaps there will not be another Leet in many Years; then this would be without Remedy.

Mr. Justice *Probyn* was clear, that it was an Offence against the Publick, and indictable.

Mr. Justice *Lee:* You may present a Nusance at the Leet, and yet surely it is indictable. *Fletcher* against *Ingram*, 1 *Salk.* 175, was very clear it was an Offence indictable, and had not the least Doubt of it, therefore Judgment was given for the King.

Lord Chief Justice: As to the Cases cited by Mr. *Reeve*, where Indictments for this Offence were before the Court, and other Exceptions taken, and no Notice of this, he thought them good Authorities.

Note; This was an Indictment found at the Sessions at *Hicks's Hall*, and removed into this Court.

Easter, Fourth of *George* the Second.

Goring Parish *against* the Parish of Molesworth.

ORDER of Removal of a Man and his Children, and Order of Sessions confirming it. The Case appeared to be, that the Pauper was hired for a Year, and served the Year; the Person to whom he was hired lived at *Goring*, and kept a Boat which navigated from *Goring* to *London*, and plied at several Places specified in the Order, but find the Pauper was not forty Days in the whole Year at the Parish of *Goring*, but served out the Year on board the Boat; and the Question was, Whether this hiring and Service would make a Settlement at *Goring?*

Mr. *Reeve*, to quash this Order, said, That here was an Hiring and Service, and notwithstanding the Words, That he had not served forty Days in the whole Year, must be meant forty Days together, which is not necessary; he admitted, that in the Case of a Boy hired to serve on Shipboard, it had been held not to gain a Settlement, but that was because no Settlement in the Parish.

Lord Chief Justice said, He could not distinguish the Case at Bar from the Case last mentioned.

Mr. Justice *Page:* The Reason why Parishes are made liable is because they are presumed to gain by the Party's Service.

And therefore the Order of Removal and the Order of Sessions were confirmed by the whole Court.

The same Term.

Staplesford Parish *against* Melton.

ORDER of two Justices for removing *A. B.* from *Staplesford* to *Melton;* Appeal to the Sessions; the Order of two Justices quashed, and a special Case stated to the Effect following, *viz.* That the Husband of the Pauper removed came into the Parish of *Melton*, and brought a Certificate with him, that he rented a Tenement of three Pounds *per Annum* in *Melton*, and forty Pounds *per Annum* in a Vill of the same, which Vill provides for its own Poor.

Mr. *Reeve* took an Exception to the Order of Sessions, which quashed the Order of two Justices, that they had stated a good Settlement gained at *Melton*, and yet that they had adjudged the Contrary, for the Statute of *W.* 3. provides that the Renting ten Pounds *per Annum* shall gain a Settlement, notwithstanding such Certificate; and a Rule was made to shew Cause why the Order of Sessions should not be quashed.

Hilary, Fourth of *George* the Second.

The King *against* the Inhabitants of Hansworth in Staffordshire.

THE Inhabitants of *Hansworth* had been indicted for not repairing a Bridge, and the Indictment was removed into this Court by *Certiorari*.

It was moved to quash this Writ, *quia erronice emanavit*, and cited the Statute of 1 *Anne*, *c.* 18. §. 5. whereby it is enacted, That no Writ of *Certiorari* should lie to remove such Indictment; therefore *erronice emanavit*.

Mr. *Reeve* on the same Side insisted, That by the Statute no Presentment or Indictment for not repairing Bridges, or the Highways at the End of Bridges, should be removed by *Certiorari* out of the County into any other Court.

Serjeant *Corbet* in answer said, That for ought appeared, a Right might come in Question, and then there was a Provision by the Statute of *W.* and *M.* but he said they were not prepared, and therefore prayed a Day to shew Cause.

Afterwards, in *Easter* Term following, on shewing Cause it was insisted that the Statute of *Anne* being a penal Law, should not be extended to the Prejudice of the Defendant; the Words of the Act are Indictments against the County for not repairing their Bridges, whereas this was an Indictment only against a Parish, and so not within the Act. A *Certiorari* has frequently gone since the making the Act, and in one Instance even in an Indictment against the County; the King against the Inhabitants of *Mitcham* in *Surry*, was in the Case of a Parish, and a *Certiorari* was awarded, and no Exception that it did not lie. The Defendants in that Case were acquitted, and afterwards an Information against the County, who were found guilty, and many Precedents are to be found in the Office.

But *by the Court:* We shall overturn all the Practice since the making the Act, if this were to prevail, and therefore judged the Record well removed.

Afterwards it was moved to quash the Indictment for the King, being by a Recital (*That Whereas*). Mr. *Worley* insisted that this Indictment being found by the Grand Jury, the Court *ex debito Justitiæ* ought to proceed on it, and the King could not stop his own Proceeding, but by *Noli prosequi*.

But *by the Court:* The Indictment must be quash'd.

Trinity, Fifth and Sixth of *George* the Second.

The King *against* The Inhabitants of Mellingham.

ORDER of two Justices for removing *William Burgess* from *A.* to *B.* and the Sessions discharge the Order of the two Justices upon the Merits, and set forth that the said *William Burgess* was bound by Indenture, though not actually indented, and adjudged the Settlement on the Foot of that Binding.

Sir *Samuel Prime* took an Exception, that this was a Binding without Indenture, and not good, and also whatever the Writing was, the Pauper was no Party to it, nor could be concluded by it.

And *by the Court:* The Exception must be allowed, and the Order quash'd.

The same Term.

The King *against* Theed.

THIS was a *Certiorari* to the Quarter-Sessions to remove a Conviction against the Defendant for not declaring to the Officer what number of Candles and of what Size

he intended to make, pursuant to the Directions of the 11 *Geo.* 1. *c.* 30. Two Justices had set the Fine of fifty Pounds, and the Sessions had mitigated it to twenty Pounds.

Mr. *Attorney General* took an Exception to the Order of Sessions, that they had made an Order before any Appeal to them, but made this the principal Question, Whether the Sessions have a Jurisdiction, and this will depend on the several Acts of Excise; 11 *Geo.* 1. directs the Fine to be recovered as by any Laws of Excise, and that will make it necessary to consider what are the Excise Acts. The first were the 12 *Car.* 2. *c.* 23. and the 12 *Car.* 2. *c.* 24. by which Acts Powers are given to two or three Justices in the Neighbourhood. The Question is, Whether any Law can be called Laws of Excise, but Excise of Beer and Ale; agreed other Matters under Commissioners, but that will not make it a Law of Excise.

In Malt Act is an Appeal to Sessions from two Justices, but then they must proceed on that Act, besides that is not properly a Law of Excise; the 5th of *George* extends only to Proceedings of Commissioners; the 1 *George* 2. relates to Duties that arise by Accident; but suppose a Jurisdiction, yet this is an Appeal from Order or Warrant, so that may be an Appeal only from a Warrant, and not from a Conviction.

Mr. *Pilsworth:* The Question arises on the 11 *Geo.* 1. and gives them Jurisdiction, the 12 *Car.* 2. *c.* 24. §. 45. intended by the Act that an Appeal should lie from them, though not expressed, that they might be armed with similar Power given by Appeal from Subcommissioners of Excise to Commissioners, as to Regularity of Appeals; 15 *Car.* 2. *c.* 11. §. 19. there are no Subcommissioners.

Lord Chief Justice: Suppose no Subcommissioners, that will not alter the Law, because the King may appoint them when he pleases.

Court said: Here are two different Offences; Sessions thought it bad for one only, and yet quash both.

An Exception was taken to the Order of two Justices that it was only said, that the same was duly proved; whereas it should appear how and by whom.

Lord Chief Justice and Mr. Justice *Page* seemed to think it unnecessary for them to state the particular Proof, for if they have pursued the Words of the Act it is sufficient.

Mr. Justice *Probyn* and Mr. Justice *Lee* said, That the Evidence ought to appear, that this Court might judge of the Sufficiency of the Proof and the Credit of the Evidence, and that it had been so determined.

In *Michaelmas* Term following Mr. *Marsh* took an Exception to the Conviction, that it was only said *being fully and duly proved*, without saying how and in what manner; the 12th *Car.* 2. *c.* 23. directs, that the Party shall be convicted by Confession, or the Testimony of one or more Witnesses. It has always been thought necessary in these summary Convictions, to state the Proof, that the Court might judge of it, for no Writ of Error lies; and it is for the Security of the Liberty of the Subject, that this Court may be able to see that the inferior Court does not act illegally; cited Queen against *Green*, *Hilary* 1713, wherein it was alledged, that Oath was made of the Truth of the Premisses, *Easter* 12 *Anne*, Queen against *Browne*, Queen against *Randall*, where it is said that Oath was made of the Truth of the said Complaint, King against *Stephens*, *Trinity* 11 *Geo.* 1. King against *Tuck*, *Easter* 11 *Geo.* 1. in all these Cases such general State of the Evidence held ill.

Secondly, That it does not appear who the Informer is, and he might be the Evidence, and then he is intitled to a Moiety of the Penalty, which will invalidate his Testimony.

Mr. *Reeve* in Answer urged, that the Statute requires the Confession of the Party, or the Oath of one or more Witnesses; this was not a Conviction by Confession of the Party, for it appears he denied the Fact; then as to the other, if the Act had actually required two Witnesses, it might have been a sort of Objection against them; but the Statute requires one or more; one here certainly is. As to stating the Evidence, he admitted, that the late Cases did run in the way Mr. *Marsh* mentions, but this Case is different; here is not Evidence given by way of Information in Writing, but the Party appears before the Justices, and pleads Not Guilty, and the Evidence is produced before the Party himself.

Court: The Evidence ought to appear, that we may judge of it, whether it supports the Charge. In the Case of the King against *Baker* in *Trinity* Term in the sixth Year of King *George* the First, it was set forth that the Witness swore that the Defendant was guilty of

the Premisses, which was held to be insufficient; the Cases cited are in Point, and all the late Cases are this way, though formerly it was held otherwise; therefore the Conviction must be quash'd.

Michaelmas, Fifth of *George* the Second.

The King *against* The Justices of Nottingham.

MANDAMUS to the Justices to allow Costs and Maintenance to the Parish of *Kirsington;* to which the Justices returned, that they had ordered and allowed thirty Shillings, which they thought was what had been reasonably paid by the Parish according to their Judgment.

Mr. *Fazakerly* objected to the Return, That it did not appear that the Justices had made a reasonable Allowance, which by the 9 *George* 1. *c.* 7. they ought to do; the Return says this Money was reasonably expended, but not that there was no more, and instead of thirty Shillings there might be thirty Pounds.

To which it was answered, That the *Mandamus* was founded upon two Acts, (*viz.*) the 8 and 9 *W.* 3. and the 9 *Geo.* 1. As to the first Act, no Exception; as to the second, the Justices have discretionary Power, and it appears they have used their Discretion, and in that they have followed the Words of the Writ and Act.

Mr. *Fazakerly* replied, That they had done right so far as they have gone, but they should have shewn that this was a reasonable Allowance upon the whole Money expended; now it does not appear by this Return, that they took the whole Expence under their Consideration for want of the Word *All.*

The whole Court seemed very clear, that this Act lodged a discretionary Power in the Justices, and that they were Judges of the Sum to be allowed, and affirmed the Return. Afterwards it appeared that the *Mandamus* was directed to the Justices at large, whereas it should have been to the Justices then present at the Sessions, 8 and 9 *W.* 3. *c.* 30. and for this Exception the *Mandamus* was quashed by the Court.

The same Term.

The King *against* Cobb.

A *MANDAMUS* had been awarded by the Court to the Dean and Chapter of *Bristol*, to admit the Defendant to the Office of Chapter-Clerk, which was returned in the Name of the Body, That in Obedience to the Writ they had admitted the Defendant.

Mr. Serjeant *Eyre* moved to quash the Writ, because this was no publick Office, but a mere private Service, and of Consequence the Writ did not lye, afterwards he said there had been some Indorsement on the Writ in the Nature of the Return, but produced Affidavits that the Majority were dissenting to that Indorsement or Return.

But *by the Court:* The Writ is returned and on the File, and you are too late to quash; nor can we admit any Affidavits against the Return; and the Motion was denied.

The same Term.

The King *against* Harvey and others.

INDICTMENT for Perjury, reciting an Indictment preferred at the Sessions against *A. B.* for Felony, upon which the Defendants were produced as Witnesses to prove the Fact, and the present Indictment sets out the Matter by them sworn; and further charges that *John Harvey* swore, etc. which was separate, and so concludes, then it goes on, that two others and each of them swore, etc. and then adds, that three more and each of them swore, etc.

An Exception was taken, that this is a joint Indictment against many, and was therefore bad, because the Perjury of one cannot be the Perjury of the other.

Mr. *Reeve* in Support of it said, That he hoped this Indictment was good, for that it was not only charged that they had sworn, etc. but also that each of them had sworn, etc. Crimes

are in their Nature several, and therefore though the Charge was only that they did, etc. yet it shall be understood that each did, etc. *Easter* 5 *Anne*, 1 *Salk.* 382. *Trinity* 10 *Anne*, the Queen against *Marshall.* Indictment against two for receiving stolen Goods; one was acquitted. And it was moved in Arrest of Judgment, that it was not charged that each received, etc.

But *the Court* said, They would understand the Charge in that Sense, 1 *Vent.* 302. 3 *Keb.* 708, the King against *Humphreys*, 2 *Roll.* 345. *Palm.* 367. *Mich.* 10 *Anne*, the Queen against *Williams*, 1 *Salk.* 384. the first Indictment therefore is not liable to the Objection, and the Objection itself is not a good one; as to the subsequent Indictments.

Lord Chief Justice: Ingrossing, Beating, etc. may be joint Acts, but Swearing cannot.

Mr. *Fazakerly* for the Defendants: Such Indictments admitted would introduce great Confusion; not only distinct but different Offences (as Batteries, Perjuries, etc.) may come to be joined; the Indictments at the Assizes may be all thrown into one, then suppose a *Certiorari* or Writ of Error is brought by one to remove such an Indictment against twenty or thirty, what can be done? the only way to prevent this Confusion is to require several Indictments against several Persons.

If this Indictment is to be considered as a distinct Indictment against *John Harvey* in the first Part of it, and then as another Indictment against the others in the following part of it, then the Cases against joining different Offences in the same Indictment, are Authorities against this Indictment, for then the Offences charged in this Indictment are several, one a several Perjury, the other a joint one; Queen against *Hodgson*, *Trinity* 6 *Anne*, two not Indictable together as Scolds. He answered the Cases of the King against *Atkinson*, and that of the Queen against *Marshall*, the Cases cited on the other Side, by saying, That the Acts there charged were several Acts done in Conjunction, but several cannot join in a Perjury, for every one takes a distinct Oath.

Lord Chief Justice: Where the Act is such as several may join in, several may be joined in one Indictment for that Act. Now Batteries, etc. which are the Offences in most of the Cases cited on the Part of the King, are Acts in which several may join, but Perjury is not such an Act, and therefore several cannot be joined in an Indictment for Perjury.

Mr. Justice *Page* to the same Effect, and said further, that this Practice, if allowed, might possibly put a Defendant under such Inconvenience in giving Evidence, that a Jury might be forced to find him guilty of an Offence, there was hardly any Colour of Reason to charge him with. No Words he said could have made this Indictment good.

Mr. Justice *Probyn:* If such Indictments were allowed, the Evidence given against one Defendant might influence the Jury against another, though it did not relate to his Offence, and therefore the Condemning such Indictments was a Matter of great Consequence to the Liberty of the Subject.

Mr. Justice *Lee:* The Counsel for the King have hardly endeavoured to justify this Indictment as a joint one, but they would have it considered as several Indictments against the several Defendants. It would be very dangerous to allow several Persons, guilty of several Offences, to be joined in one Indictment. Several Actions cannot be joined, and therefore, as it seems, several Indictments cannot, though no Cases have been cited to prove this of Indictments, yet the Reason seems to be the same with respect to these as Actions; so Judgment was arrested and the Defendants discharged.

Easter, Seventh of *George* the Second.

The King *against* Gibson.

THE Defendant had been convicted at *Guildhall* for forging a Note; and now Mr. Serjeant *Eyre* would have moved for a new Trial; but it was objected by the Counsel for the King, that the Defendant ought to be in Court when any Motion was made in Arrest of Judgment, or for a new Trial.

On the other Side it was said, That in the Case of a Motion for a new Trial, the Party need not be in Court, though they admitted that in Arrest of Judgment he must.

But this Distinction was not agreed by the Counsel for the King.

The whole Court seemed to think that the Party ought to be in Court, but said the Counsel might look into Precedents, and stir it again before four Days were expired.

In the Case of the King and Lady *Lawley*, *Hilary* 3 *Geo.* 2. held in a Motion for a new Trial or in Arrest of Judgment, the Defendant must be present in Court, if a Commitment is to be the Consequence of the Judgment.

Afterwards the Chief Justice said, That he had looked into Precedents, and found that it was settled, that in all Motions, as well for new Trials, as in Arrest of Judgment, in a criminal Matter, the Defendant ought to be in Court; and so it was held in the Case of the Queen against *Ridpath*, *Mich.* 12 *Anne*, the King against *Lant*, 7 *W.* and said that he mentioned it, that for the time to come it might not be made a Question, but the Defendant ought to appear; and a Rule was made accordingly.

The Defendant had been indicted for forging a Note, and publishing the same knowing it to be forged, and in the Indictment they had set forth the Purport, as also the Note itself; and it was laid different ways. Defendant was convicted, but upon the Trial an Objection was taken, that the Purport set forth was not agreeable to the Import of the Note, as the same was set out; and as the Evidence did not fully come up to the Purport set forth, they insisted for the Defendant that they ought to be at Liberty to move it in Arrest of Judgment as a Variance, or for a new Trial.

Chief Justice on the Trial gave them Leave to move it for a new Trial, and now being moved, it was insisted that this Import was the Substance of the Indictment, and the whole made one Offence, and the Evidence not coming up to it, the Defendant ought to have been acquitted; and insisted further, that this was such a Variance that the Defendant could not have the Benefit of the Plea *Auterfoits Convict.* On the other side, this is not the Substance of the Indictment; it was unnecessary to have set out the Purport where the Note itself was set out, and it was only the Inference of the Grand Jury upon the Import, and though that should be wrong it is not material. Suppose a Declaration on a Note set out, by Virtue whereof the Defendant became bound to pay the Money at a wrong Day, that would not be material, because the Note is the Gift of the Action.

Chief Justice said, The Evidence was strong and seemed clear; that the Variance contended for seemed to him not inconsistent with the Tenor of the Note set out; but it was a Matter *ex abundanti*, and not necessary, but left to the other Judges.

Mr. Justice *Page* and Mr. Justice *Probyn* were clear, that this was not the Substance of the Indictment, and that the Verdict ought to stand, and no new Trial be granted.

Mr. Justice *Lee* said, That this was properly a Motion in Arrest of Judgment, it being a Variance arising upon the Face of the Record; but though clearly there was no Inconsistency between the Purport and Import, and therefore not sufficient to ground a Motion in Arrest of Judgment upon it, agreed that the Gift of the Indictment was Forging the Note itself, and not the Apprehension of the Jury upon it, was clearly against arresting the Judgment or a new Trial.

Chief Justice agreed.

By the Court: Take nothing by the Motion.

Chief Justice: There is a Difference between a Motion in a Civil Action, where a Variance appears, though in a minute Circumstance, and shall affect the Plaintiff, and a new Trial be granted, or the Judgment arrested. But in the case of a criminal Prosecution, if the Offence laid be proved, though every Circumstance attending it be not proved, it will be sufficient.

Trinity, Eighth of *George* the Second.

The King *against* Gibson.

THE Defendant had been convicted of publishing several forged Notes to a considerable Value, and was fined one hundred Pounds, six Months Imprisonment, and till the Fine was paid, and then to find Security for his good Behaviour for seven Years.

Mr. *Ketleby* moved, that he might be bailed, he having paid his Fine, and the Time for which he was committed being expired.

It was said in Answer, that Bail could not be opposed, but as the Notes which he had published were for several thousand Pounds, hoped the Court would consider of the Value of those Notes in the Sum for which his Bail should stand.

Lord Chief Justice: In Mr. *Ward's* Case the Court governed themselves by taking Bail in double the Fine, and so we must do in this Case.

N. B. This he mentioned as a Rule now established.

Hilary, Thirteenth of *George.*

The King *against* Morrin.

MR. Serjeant *Raby* moved on the behalf of the Defendant, to quash an indictment for keeping a disorderly House; which the Court refused to do, saying that the Defendant ought to demur to such Indictment.

Hilary, Tenth of *George.*

The King *against* Roper.

MR. *Fazakerly* moved to quash an Indictment after the Recognizance to appear to it was forfeited.

By the Court: Quashing is only an Act of Favour, for then we must set aside the Recognizance, which we cannot do; this is a settled Rule. *Salk.* 380.

The same Term.

The King *against* Barkley.

THE Defendant was an Overseer, and indicted for not repairing the Highways; and held, that where a Man hath forfeited his Recognizance, the Court will not quash the Indictment upon Motion; for that Indulgence is not to be allowed the Defendant after he is once in Contempt.

And Mr. Justice *Fortescue* said, There was no Instance where an Indictment for such an Offence as this, was ever quashed upon Motion; the Defendant ought to demur to it, if there is any Defect in it.

Easter, First of *George* the Second.

The King *against* Morris.

MR. Serjeant *Raby* moved to quash an Indictment after the Recognizance, by which he was obliged to bring the Cause to Trial, was forfeited; but the Court refused the Motion.

Trinity, Tenth of *George.*

Anonymus.

MOTION to quash an Indictment for a Contempt to an Order of Justices of Peace, and the Exception was, That the Indictment was not certain, but by way of Recital, *That Whereas;* the Case of *Rice Thomas* in *Plowden*, and the Queen against *Goddard* in *Holt's* Time, 2 *Mod.* were cited to support the Objection.

And *by the Court:* The Indictment was quash'd. And

Mr. Justice *Fortescue* said, That in Civil Cases a Recital *That Whereas* is sufficient, but not in Criminal Cases. So in Civil Cases it is sufficient to name the County in the Margin, but not so in criminal Cases, which require the utmost Certainty.

Michaelmas, Eleventh of *George.*

The King *against* Baker.

THE Defendant being indicted, Mr. *Fazakerly* took an Exception to the Indictment, That it did not appear in the Body of the Indictment in what County the Offence was committed, the County being only mentioned in the Margin, which he said was not sufficient.

The Court said, That this was an Exception that had been often allowed, and ordered it to be quashed, unless Cause.

The same Term.

The King *against* Goodwin.

THE Defendant was indicted upon the 11 and 12 *W.* 3. for carrying over Passengers between *Walton* and *Sudbury* on a *Sunday*, contrary to that Statute.

And Mr. *Reeve* moved to quash this Indictment, because by the Statute which creates this Offence there is another Penalty prescribed, which is by Warrant and Distress, and therefore the Offence was not Indictable. 1 *Mod.* 38. *Show.* 398. 1 *Vent.* 63. 1 *Sid.* 439.

The Court denied to quash the Indictment upon Motion, for it was an Offence of too high a Nature, and the Defendant must plead or demur to it; and on Demurrer, *Easter* 11 *Geo.* the Defendant had Judgment; for it is not an Offence Indictable, for the Statute gives no such Remedy.

The same Term.

The King *against* Chandler.

THE Defendant was indicted at the Quarter-Sessions for secreting *P. S.* who was big with an illegitimate *Fœtus*, in order to prevent her from giving Evidence who was the Father of it. The Defendant demurred to this Indictment; and the Court adjudged it to be ill, and the Indictment was quashed; for the Justices of Peace have no Jurisdiction till the Bastard be born, and there is no such thing in the Law as an illegitimate *Fœtus*, for till it was born it could not be a Bastard.

Easter, Twelfth of *George.*

The King *against* Warr.

THE Defendant was indicted for a Misdemeanor; and on Demurrer to the Indictment Mr. Serjeant *Chaple* took an Exception to it, That by the Caption it appeared to be taken at a Sessions held on such a Day next after the Feast of St. *Ephany*, when it should be *Epiphany*, which is the proper Time for holding the Sessions after *Christmas;* but that this is at a different Time from that prescribed by the Statute. For *Epiphanius* in the *Roman* Calendar denotes a Saint's Day consecrated to the Memory of one of that Name, Bishop of *Salamis* in the Island of *Cyprus*, in the Time of *Theodosius* the Emperor, and falls out in *March;* so it must be presumed the Indictment was taken at an improper Time. Upon this Reason the Court held the Indictment ill, and gave Judgment for the Defendant.

Trinity, Twelfth of *George.*

The King *against* Smith.

THE Defendant was found guilty on an Indictment for making great Noises in the Night with a speaking Trumpet, to the Disturbance of the Neighbourhood; which the Court held to be a Nusance, and fined the Defendant five Pounds.

The same Term.

The King *against* Parr.

THE Defendant was indicted for laying Timber so near a Chimney, that if the Chimney should fire the Wood, the Wood might endanger the burning the Village; and on Demurrer Judgment was given for the Defendant, this being a Matter which was not Indictable.

Michaelmas, Twelfth of *George.*

Anonymus.

MR. Serjeant *Girdler* excepted to an indictment in Arrest of Judgment for stealing a negotiable Note out of the Pocket of *J. S.* and tearing it, because it is not said at what Place this was done; and the Word *there* which follows must be said to have Relation to something preceding, so here is a defective Charge, and the whole is vitiated.

By the Court: This is only Surplusage.

And Mr. Justice *Fortescue* said, In an Indictment of Trespass the Bounds and Buttals of the Place where such Trespass is committed, may be set forth, yet he never knew an Indictment thus drawn, tho' it would be very good notwithstanding such a clause was inserted.

Hilary, Thirteenth of *George.*

The King *against* White.

THE Defendant was indicted for disobeying an Order of two Justices, made upon the Overseers of the Poor and Church-Wardens of a Parish, to relieve a necessitous Person with such a Sum of Money as was sufficient for her Maintenance.

Mr. Serjeant *Baynes* moved to quash it, because it was too loose and uncertain.

By the Court: First move to quash the Order of two Justices, and then you will be proper to move to quash the Indictment.

Second *Exception:* The Indictment is laid with a Recital, and that Form was held to be vitious in the Case of the King against *Crowhurst.*

The Court said, Then you may demur to it.

The same Term.

The King *against* Hall.

THE Defendant was indicted for an Offence done contrary to the Statute relating to the Regulation of the Woollen Manufacture in the *West-Riding* of the County of *York*, which set forth, *That Whereas* the Act of Parliament was made such a Day, etc. An Exception was taken to this Indictment in order to quash it; that the Words *That Whereas* in the beginning of the Indictment govern the whole, and are only a Recital of a Fact, but no express Charge. So held in the King against *Jefferson*, where the Indictment was quashed for that Fault. And a Rule was made to shew Cause why this Indictment should not be quashed. Cases cited, *Salk.* 371. *Comb.* 213. 1 *Mod.* 73.

The same Term.

The King *against* Hartley.

MOVED to quash an Indictment, because in the Caption it is not said in what County the Borough of *Leeds* is.

By the Court: You come too early in this Motion, for since it is an Indictment returned in this Term into this Court, a Fault in the Caption may be amended the same Term in which it is removed up hither. The Case of the King against *Dearling* was cited as to the Amendment. *Stile* 85. 1 *Saund.* 249.

Michaelmas, First of *George* the Second.

The King *against* Edgar.

MOVED to quash an Indictment, which charges that the Defendant had not sent a Cart or Carriage, but omits to say where the Defendant was to go, or what Service he was to do, and therefore no Offence was laid against the Defendant; whereas it should have been for not coming to assist in repairing the Highways with his Cart on Notice given by the Surveyor. Cases cited 2 *Keb.* 302, 303, and a Rule was made to shew Cause why the said Indictment should not be quashed.

Trinity, Tenth of *George*.

The King *against* Pollard.

THE Statute 1 *Anne* makes Receiving and Buying stolen Goods Felony, and the 5 *Anne c.* 31. recites the first Statute, and makes a Provision that the Offender may be prosecuted for a Misdemeanor, if the Principal cannot be taken and convicted. The Defendant was indicted for receiving stolen Goods, and the Indictment was contrary to the Form of the Statute generally, without saying feloniously. It was objected, that this Indictment was insufficient and uncertain, because it did not show upon what Statute the Defendant was prosecuted, whether for the Felony or the Misdemeanor.

But *by the whole Court:* The Indictment is good, for though this Offence be made a Felony by the first Statute, yet the second provides that the Party may be prosecuted for a Misdemeanor; and it is at the Election of the Prosecutor on which of the Statutes he will proceed. But this Indictment shall be intended to be an Indictment for the Misdemeanor only, because it is more beneficial for the Party. This present Indictment is agreeable to all the Forms of Indictments in such Cases since the Statute.

Michaelmas, Twelfth of *George*.

The King *against* Dupee.

MR. *Marsh* moved to quash an Indictment which set forth, That the Defendant took upon him to personate one *A. B.* Clerk to *Henry Harper* Esq; one of his Majesty's Justices of the Peace, with an intent to extort Money from several People, in order to procure their Discharge from some Misdemeanors for which they stood committed.

The Court would not quash it, but said, The Defendant might demur to the Indictment.

Hilary, Second of *George* the Second.

The King *against* Mallard.

THE Defendant was indicted, for that he within fifteen Miles of the City of *London* did burn *Stock-Bricks and Place-Bricks together, contrary to the Statute.* An Exception was taken to this, That the Statute 12 *Geo.* 1. which creates this an Offence, prescribes a Penalty of two Shillings *per* thousand to be recovered by Action of Debt, in the Name of the Master, etc. and therefore an Indictment is not proper. Answer: As to the Fact of burning Place-Bricks and Stock-Bricks together, no Power of amercing is given to the Warden of the Company, and an Indictment would lie for a Breach of the King's Law; in 2 *Vent.* 267, 187. it is laid down as a Rule by *Manhood*, Chief Baron, *Mod.* 238. That where a Statute giveth a Forfeiture either for Nonfeasance or Misfeasance, the King shall have it; so in 11 *Co.* 68. 1. *Mod.* 134.

Lord Chief Justice *Raymond:* This last Case was denied by Holt to be Law; so in 2 *Inst.* 163. Whenever an Act of Parliament doth generally prohibit any thing, the Party grieved shall not have his Action only for his private Relief; but the Offender shall be punished at the King's Suit for the Contempt of his Laws.

Contra; No Indictment is given by this Act; and it not being an Offence before, you can have no Remedy but what is prescribed by the Statute.

The Court said, This Penalty is in the Nature of a Debt due to the King, and you must sue for it in the Exchequer, and the Indictment will not lie. Judgment for the Defendant on Demurrer.

N. B. This Statute was altered the Sessions following.

Easter, Second of *George* the Second.

The King *against* Wind.

THE Defendant was indicted, for that he riotously did break the Prosecutor's Pails, and took away several of his Engines. The Defendant was found Guilty at the Trial.

And Mr. Serjeant *Darnall* moved in Arrest of Judgment, that the Indictment was faulty, because the Riot is not said to be done *Vi* and *Armis* with Force and Arms, which Words are intirely left out of the Record; 2 *Keb.* 133, the King against *Watson*, an Exception was taken to an Indictment of forcible Entry, for that the Defendants did riotously and unlawfully enter into a Close, but did not say *Vi* and *Armis*, and also they did not say *where the Close was; and it was quashed by the Court.*

Mr. *Lacey* on the Rule to shew Cause; The Indictment concludes against the Peace, though the Force and Arms are omitted; but these Words are not material, if there be any Words in the Indictment that are tantamount to them; as in an Indictment for forging, etc. after Conviction and Judgment given, an Exception was taken to it, That the Indictment did not say, *quod contrafecit falso;* but the Court held that the Word *contrafecit* necessarily implied in it the Word *falso*, and so not material whether *falso* was expressed or omitted; *Stiles Rep.* 12. *Salk.* 384, in the Case of *Smith* against *Brown*, 7 *Anne*, in an Appeal of Murder, held good without this. But at all Adventures this Case is within the Provision of the Statute 37 *H.* 8. *ch.* 8. which expressly provides, that Indictments lacking *Vi* and *Armis*, shall be good and effectual in Law, as any Indictments, etc. having those Words comprized in them. And agreeable to the Provision of this Statute is the Case resolved in *Cro. Jam.* 345. *Cramlington's* Case, reported also in 2 *Bulst.* 208. The Defendant was indicted for a Rescous, and an Exception was taken to it, That it wants the Words *Vi* and *Armis;* but *Coke* was of Opinion it was a good Indictment without them, and *Dodderidge* held the Word *recussit* implies it to be done with Force, and held it good; *Hart's* Case *Cro. Jam.* 472. indicted for a Rescous, and assigned for Error, that it was not *Vi* and *Armis*, but over-ruled; for though it was Error at Common Law, yet made good by the Statute of 37 *H.* 8 *Popb.* 206. indicted for stopping a Way, and *Jones* held the Indictment was well, though it wanted *Vi* and *Armis;* because he who is supposed to stop the way is Owner of the Land; 2 *Lev.* 22, indicted for Forgery, and Error assigned, that the Indictment wanted *Vi* and *Armis*, and it is not for a Nonfeasance but a Malefeasance; and *Jones* held that it was cured by the express Words of the Statute 37 *H.* 8. and relied on *Hart's* Case; and the other three Judges at last agreed with him, that the *Vi* and *Armis* being omitted, was cured by the Statute; *Show.* 339. indicted for shooting with Hail-Shot, contrary to the Statute of the 2 and 3 *Edw.* 6. and on Error it was urged there was no *Vi* and *Armis*, but not allowed, for that is needless; same Case 4 *Mod.* 49. Here the Defendant is found guilty of riotously breaking and taking away; the Exception seems to come a little behind hand; for as it is found, the Fact can hardly be said to have been peaceably done. *Tucker's* Case, *Comberb.* 257.

Mr. Serjeant *Darnall* in answer said, The calling it a Riot does not import it was done with Force, but the Fact is left as Evidence to the Jury. An Assault and Battery cannot be supplied without *Vi* and *Armis;* the Statute 37 H. 8. only supplies the Want of setting out the particular Instruments, as Swords, Staffs, and Knives; 1 *Vent.* 265. If an Indictment be brought for breaking down a Man's Rails, that is but a Trespass, and not indictable; but if it be said to be done *Vi* and *Armis*, the whole description of the Force is included, and describes a Breach of the Peace; the King against *Soleby.* That in *Cro. Jam.* is

excussit, and held to imply a Force; but as to its being after a Verdict, that makes no Difference.

Lord Chief Justice *Raymond:* Does not the Word *riotously* in the Indictment imply a Force? I think it is a Force; for how can there be a *riotous* Assembly and Breaking down Pails without an Act of Force? and if on the Trial there had been no proof of a Riot, the Defendant could not have been convicted.

The Clerk of the Crown informs us, that about six Years ago an Indictment for an Assault and Battery was held good, without the Words *with Force and Arms.*

And Mr. Justice *Reynolds:* The Word *riotously* signifies the Manner of doing the Fact, and does not relate to the Intention of doing a thing without going farther.

Mr. Justice *Probyn* accords. Rule to Arrest the Judgment was discharged.

Trinity, Tenth of *George.*

The King *against* Walker.

AN Indictment was found against the Defendant for exercising a trade contrary to the Statute 5 *Eliz.* And being removed hither by *Certiorari*,

Mr. *Fazakerly* took an Exception to the Caption, which was thus, *Be it remembered that at the General Quarter-Sessions of the Peace, held at K. in the County of* W. etc. *by Adjournment*, and said it was not sufficient to say *at the Sessions*, etc. *by Adjournment;* but they ought to have shewn regularly when the Sessions were held, and so have shewn that the Sessions was regularly continued to this Adjournment.

And Mr. Justice *Fortescue* held this a good Exception. And a Rule was made to shew Cause why it should not be quashed, which was afterwards made absolute. *Comberb.* 418.

Trinity, Ninth of *George.*

The King *against* Tomlinson.

UPON Motion to quash an Indictment for a trespass, *quare Vi.* and *Armis*,

Mr. Justice *Fortescue* said, That an indictment does not lie properly in any Case but where the Publick have some Prejudice, and as the entring the Close of the Prosecutor was a mere private Injury, he ought to have his Remedy by Action, and not by Indictment. This differs from the Case of an assault, for which a man may have both an action and an Indictment. For where a Person is beaten, assaulted and maimed in his Limbs, the Publick suffers a Loss by his being rendered unfit for service; for the King and his Country are interested in every Man's Life, and the Preservation of his Limbs. 1 *Mod.* 71. Before the Statute, the King had a Fine upon common Trespases *quare Vi* and *Armis.*

Easter, second of *George* the Second.

The King *against* Longbottom and another.

THE Defendant was indicted for Subornation of Perjury, which set forth that they two and each of them did suborn four several Persons, and each of them to swear that two Persons named in the Indictment, who had been prosecuted at the Suit of the King, were guilty in the Premisses, as found by the Jury in that Indictment.

Moved on the part of the Prosecutor to quash it, because it is laid that they and each of them did suborn, which is making both the Defendants guilty of one Offence.

By the Court: So they may.

Another Exception; The Evidence set out in the Indictment is too general to support it; and the Court agreed that it was so, and made a rule to shew Cause.

N. B. This was a Motion on the behalf of the Prosecutor, for the Court will never quash an Indictment for Perjury or Subornation on the Part of the Defendant.

Michaelmas, Third of *George* the Second.

The King *against* Bell.

THE Defendant was indicted for persuading the Master of a Coal Vessel not to sell his Coals at the Port of *Boston*, in order to raise the Price of Coals and make them dear.

Moved to Quash this Indictment upon the very Form of it, there being no Conspiracy laid, nor any Day mentioned when the Fact was done. On the Rule to shew Cause it was quashed, no Cause being shewn.

Hilary, Third of *George* the Second.

The King *against* Saunders.

MR. *Yate* moved to quash an Indictment taken at the General Quarter-Sessions of the Peace held at *Bristol* on the 17th Day of *September*, by Adjournment, on this Exception, that the Time when the original Sessions commenced was not set forth in the Indictment, which is necessary to be done, because the Meeting of the Justices is settled by the 2 *H.* 5. *c.* 4. and any Act of the Justices done at a different Time from that which is appointed by the act of Parliament for them to do Business at, is strictly irregular and void, unless the Continuation of the Sessions is set forth by the Adjournments from time to time; The Case of the King against *Walker* maintains this Objection.

The Court agreed there was a Difference between an Order of Sessions held by Adjournment and an Indictment taken at a Sessions adjourned; for in the first Case the Order is bad, if it be not shewn when the original Sessions began, because the appeal must be made to the *next Sessions*, to which the Power of the Justices is confined by the Statute; but in the latter Case an Indictment may be taken at any Time, the Power of the Justices in that respect being general, but in the other confined by the Statute. But they thought the Case of the King against *Walker* an authority settled, from which they would not recede; though there was no great Reason for establishing it; and upon the Resolution of that Case they quashed this Indictment, as the same Day they arrested the Judgment in an Indictment of the same sort, for exercising a Trade, on the same Exception; the King against *Fisher*.

Michaelmas, Third of *George* the Second.

The King *against* Taylor.

MR. Serjeant *Girdler*, moved to quash an Indictment found against *Anne Taylor* the wife of *John Taylor*, which set forth that she was a Slanderer and a common Disturber of the King's Peace, and that she loaded one *J. S.* with divers Contumelies in his own House. The Exception was, that this was two general a Charge, and came within the Case of *Barretry*, and too trivial an Offence for an Indictment, 1 *Lev.* 299. 1 *Mod. Rep.* 451. the Indictment should have charged her with being a publick Brawler, 6 *Mod.* 11. *Cro. Jam.* 19, 20. Indictments ought to be certainly laid, and not in general Terms. On the rule to shew Cause, the Court quashed the Indictment, for (a Brawler) is a known Term and necessary to be used.

Easter, Third of *George*, the Second.

The King *against* Martha Brian.

THE Defendant was indicted for attempting to defraud one *Langley*, a Mercer in *Lud-gate-Street*, of some Pieces of Velvet and Silks, pretending she was servant to a Lady his Customer who wanted the Goods, and that she was to carry them back with her. This appeared on the Evidence at *Guildhall* before my Lord Chief Justice *Raymond*, and the Prosecutor suspecting her refused to let her have the Goods she asked for, and which were mentioned in a Letter she said was sent by the Lady; he carried her before a Justice of the Peace, she was found Guilty on that Indictment; and now moved in Arrest of Judgment,

That by the Record it does not appear she made Use of *any false Tokens*, and then it is not an Indictable Offence; the King against *Jones*, *Salk.* 379. 6 *Mod.* 105. And as it appeared that she did not get any of the Prosecutor's Goods into her Possession, she cannot be charged by Force of the Statute 33 *H.* 8. *c.* 7. and that has been resolved, 1 *Vent.* 304. 5 *Mod.* 18. and the refore, as no Damage has accrued by this Attempt of the Defendant, she ought to be freed of the Judgment, 6 *Mod* 311. and there is no Authority to support this Indictment.

On the other Side it was said, That the Prosecutor is a Tradesman, so the Attempt is publick in its own Nature. This is an Indictment at Common Law, and the Fact is a Misdemeanor. No Action would lie in this Case, which is the Reason given in the Books quoted, why an Indictment should be maintained. But Judgment was arrested.

The same Term.

The King *against* Clendon.

MOVED in Arrest of Judgment on an Indictment for making an Assault and Battery the 5th Day of *November*, on *Mary* the Wife of *William Beatniffe* and another. The Exception was, That the Indictment is against one Person for beating of two others, which are two distinct Facts, and ought not to be charged in the same Indictment. It was answered, That with Respect to the Crown it is but as one Offence, and no Inconvenience can happen to the Party.

By the Court: The Crimes may be different, here may be distinct and separate Judgments and Verdicts, and the facts cannot be join'd; Judgment arrested.

Michaelmas, Fourth of *George* the Second.

The King *against* Rogers.

THE Defendant was indicted for exercising a Trade in the Borough of *Daventry*, not having served an Apprenticeship, and concluded contrary to the Charter of the Borough.

Moved to quash this Indictment, because the Conclusion is wrong; a Charter cannot restrain a Man from using a Trade that has not served an Apprenticeship; but the Statute 5 *Eliz.* creates it an Offence, and therefore the Indictment should say that it was done against the Form of the Statute; and a Rule was made to shew Cause.

Hilary, Fourth of *George* the Second.

The King *against* Stoughton.

THE Defendant was indicted for a Nusance, in erecting, or causing to be erected, a Hedge across an Highway, and for digging, or causing to be dug, a Ditch there. To this Indictment the Defendant demurred for Uncertainty, which could not be made good by Intendment, agreeable to the Cases in *Salk.* 342, 371. the King against *Stocker*, where a Charge in the Disjunctive was held ill; 5 *Mod.* 137. 2 *Roll. Abr.* 81. *Lamb. Just. Book.* 4. *c.* 5. To this it was answered, That the Indictment set forth, that the Defendant continued this Nusance for two Years, and that is a Matter indictable of itself, and every Continuance is a new Offence.

Another Exception, that the Hedging and Ditching are not laid distinct in this Indictment, but all the Charge is involved in the Disjunctive. And at another Day an Exception was taken to the Caption of the Indictment, for that it is said to be taken before *A. B.* and *C. D.* Esq; Keepers of the Peace, etc. but this does not shew they were Justices of the Peace, and then they had not any Authority to take Cognizance of this Offence.

The Way where this Hedge is supposed to be erected is laid to be a Common Foot-Way, and properly it ought to appear to be the King's Highway, which is not so laid in this Indictment.

Mr. *Reeve* for the King, in answer to the Exception taken to the Caption, said it was certain enough, for the Caption mentions them to be Keepers of the Peace, and also Justices

assigned to hear and determine divers Felonies, etc. and in 2 *Rolls* 95. Keepers of the Peace are held equivalent to Justices of the Peace. As to the Exception of its being laid in the Indictment to be a Common Foot-way, and not the King's Highway, it is there laid to be a Common Foot-way Time out of Mind, for all the King's Subjects to pass and repass, which is a proper Description. As to the First and grand Exception, that the Defendant did erect, or cause to be erected, it is in its Nature the same Offence, for if he causes an Hedge to be erected across a Way, it is the same thing as if he had made it himself; but the Indictment goes on, and charges that the Defendant continued the Erection of this Hedge, so that if he did not cause it to be made, yet if he himself continues it after it is made, that is sufficient to maintain the Indictment.

To this it was replied, that the Question was, Whether this Way is described to be such a Way as the King's Subjects have a Right to pass; for possibly it may be only a permissive Way, and the Continuance of this Hedge is so uncertainly alleged, that it is no Offence.

Court: Keepers of the Peace is not a right Description of those Persons that act under his Majesty's Commission of the Peace, and the Words following were the Commission of *Oyer* and *Terminer* only. The Way is laid to be a Common Foot-way Time out of Mind, for all the King's Subjects, and that is enough; this laying of the Erection is wrong in the Disjunctive; the Continuance must be the same Offence, for it does not appear that the Defendant raised it. Afterwards in *Easter* Term following Judgment was given for the Defendant, upon the Authority of the Case of the King against *Stocker*, *Salk.* 371.

Trinity, Ninth of *George.*

The King *against* Henshaw.

THE Defendant was Indicted for speaking the following Scandalous Words, "Thou hast stolen fifteen Gallons of Brandy; thou art a Thief, and I will prove thee one." Quash'd upon Demurrer.

The same Term.

The King *against* Sayer.

THE Defendant was indicted for saying of several Justices of the Peace they were come to put an Imposition on the Country; but the Words were not charged to be spoken of them in the Execution of their Office.

Another Part of the Indictment was for saying of one of the Justices, He encourages Extortion, but does not conclude against the Peace, which Omission in *Cro. Jam.* 527. was held ill, *Lamb. Just. b.* 4. *c.* 5.

And Mr. *Fazakerly* for the Defendant moved to quash it; but the Court refused to quash it, and said that Quashing was a mere Indulgence, and the Defendant must demur to it, if he will take any Advantage of its Defects.

Trinity, Eleventh of King *George.*

The King *against* Edgar.

THE Defendant was indicted for that he made, composed and writ a scandalous Libel against one *Lambert* a Church-warden and others, wherein where these Words, Here is three *Cockels* in this Place (meaning *Cuckolds*) we *now* (meaning *know*) them well, *he* (meaning *Lambert*) is a *Nave* (meaning *Knave*) he cheats and *rongs* (meaning *wrongs*) the County, and is the Cur of a Son of a whore. The Defendant demurred to this Indictment.

And Mr. *Fazakerly* moved for the Defendant to have it quashed, because these Words are not intelligible, and want a Meaning, and therefore are not injurious to the Prosecutor, nor Indictable.

Lord Chief Justice *Raymond:* The present Libel is plain to all Men, and easily to be understood, and it would be hard that a Court of Justice must not understand it is spelt badly, when all the World besides make no Scruple to find the Signification of the Words;

and if Men were not to be punished for speaking of these Sorts of Words, what an Inundation of Scandal would be let in upon us?

And Mr. Justice *Fortescue* cited the Case of the Queen against *Hunt*, where the Defendant was set in the Pillory for a Libel which had only the first and last Letter of the Name; for the Court there said they would make it Sense, and here the Court gave Judgment for the King.

Michaelmas, Twelfth of *George.*

The King *against* Smith.

MR. Serjeant *Probyn* moved to quash an Indictment, which set forth that the Defendant in Discourse spoke these Words, "G—d damn the Mayor," but there is nothing mentioned besides, to fix them to be spoken of the Mayor of *Wallingford* in the Execution of his Office, nor of whom the Discourse was had; he cited 1 *Vent.* 10, 16. 6 *Mod.* 125.

By the Court: We will not quash this Indictment, for Words spoken of a Magistrate are too great an Offence to be indulged with such a Favour. The Defendant may demur to it.

The Serjeant said, It will be hard to make these Words Indictable, for at most they are but saucy Words.

But Mr. Justice *Fortescue* said they were very indecent.

Easter, Twelfth of *George.*

The King *against* How.

THE Defendant was Indicted for speaking certain scandalous Words of Sir *Nicholas Carew* a Justice of the Peace; and for obstructing the said Justice in the Execution of his Office. But the Indictment neither set forth the Words that were spoken, nor in what Manner the Defendant obstructed the Justice in the Execution of his Office. The Defendant demurred generally, and the Court was clearly of Opinion for him; for the Indictment ought to have set forth the Words, that the Court might judge of them whether Indictable or not, and it ought also to have set forth in what Manner he was obstructed in his Office, so that the Court might judge whether it was an Obstruction or not; and the Indictment being ill in both Respects, the Court gave Judgment for the Defendant.

N.B. The Court agreed in this Case, "That if an Indictment contains two distinct Charges, for two distinct and independent Offences; and the Defendant demurs generally; though one of the Offences be not indictable; or be insufficiently alledged; yet there shall be judgment for the King; if the other Offence be Indictable and sufficiently alleged; for an Indictment may be good in Part and bad in Part.

Trinity, Twelfth of *George.*

The King *against* Newport.

At Guildhall, before Raymond Chief Justice.

AN Information for a Libel setting forth, that the Defendant caused to be printed and published a scandalous Libel, called the *Post-Boy* of——— to ——— in which was contained the following scandalous Passage, and so set forth the Paragraph. Upon the Trial it appeared, that the Defendant brought the Paragraph to the Printer, and desired him to publish it in the *Post-Boy.*

And the Chief Justice was of Opinion, That this Evidence did not support the Information, which charges him as Publisher of the whole Paper, whereas it now appears he was only concerned in part of it; so the Defendant was acquitted.

Hilary, Second of *George.*

MOVED to quash an Indictment for calling the Prosecutor a Whore, and thou hast a Bastard, because it is more proper to bring an Action for speaking of these Words,

if they are scandalous and prejudicial to her, and a Rule was made to shew Cause why such Indictment should not be quashed for the Reasons aforesaid.

Hilary, Tenth of *George.*

The King *against* Dodd.

AN Information was moved for against the Defendant, for selling and publishing a Libel against one *Chambers;* and it was insisted upon, for the Defendant, that she was Sick, and that her Servant took the Libel into her Shop without her Knowledge.

But *by the Court:* This is no Excuse, for a Master shall answer for his Servant, and the Law presumes him to be acquainted with what his Servant does.

Mr. Justice *Fortescue* said, That it had been ruled, that the finding a Libel on a Bookseller's Shelf was a Publication of it by the Bookseller.

And Lord Chief Justice *Raymond* said, It hath been ruled, that where a Master living out of Town, and his Trade is carried on by his Servant, the Master shall be chargeable with the Servant's Publishing a Libel in his Absence.

Hilary, Twelfth of *George.*

The King *against* Papinian.

THE Defendant was indicted for a Nusance, in erecting a certain Mole upon a River near to the Highway, for dressing Sheep-skins, and for putting such Skins into the said Place; by which the Air thereabouts was corrupted; the Defendant was found Guilty, and the Judgment against him was, that he should be fined one hundred Pounds. Upon this Judgment a Writ of Error was brought, and the general Errors were assigned.

And Sir *John Strange* took two Exceptions to the Judgment.

1. That this Offence, in the Manner it was laid, did not appear to be indictable; for the Indictment only charged that the Mole was erected near the Highway, and that the Corruption of the Air was likewise laid to be only near the Highway; whereas it was not indictable unless it was in the Highway, and the saying it was near the Highway is altogether uncertain.

But this Exception was over-ruled by the Court upon the first Opening, because the corrupt Air was said to be in the Highway, and was occasioned by the Defendant's dressing Skins near the Highway, so that it was sufficiently alledged.

Second Exception was, and it was the material one; went to the Judgment that was given against the Defendant upon the Indictment, which was this, That the Judgment was ill, because there was no Judgment given to abate the Nusance, but only a Judgment for a Fine.

Sir *John Strange* in Support of this Objection argued, That the Intent of Indictments for Nusances was in order to have an End put to them by one Suit, and to avoid Multiplicity of Actions, and it is upon this Reason, that an Indictment for a publick Nusance is given before an Action upon the Case, because it makes an End of things at once, which is not done by giving Damages in a civil Action. The Inconveniences to the Publick are intended to be removed by these Indictments for Nusances; but that cannot be effected in any Manner other than by Judgment to abate the Nusance; for as to the Fine the Publick is not a Straw better for it; and a Man in many Cases may think it worth his while to pay the Fine and continue the Nusance, by which Means the Publick Inconvenience receives no Redress; in the Case of the King against *Walcot*, *Salk.* 632. the Attainder for High-Treason was reversed, because the Words *ipso vivente* were omitted in the Judgment; and yet that cannot be said to be so material a Part of the Judgment in that Case, as the Abating the Nusance is in the present Case. For in *Walcot's* Case, there being Judgment given upon him to suffer Death, which is *extremum Supplicium*, the Omission of the Words *ipso vivente* was only a Defect in Form.

But *the Court* held, That the Common Law having made that a Part of the Judgment, it was not in the Power of the Court to omit it. In the present Case the principal Judgment

which the Law has appointed is, that the Nusance shall be abated, to which the Court may add, if they think proper, the further Punishment of a Fine. But unless the Court gives Judgment that the Nusance shall be abated, the Publick cannot possibly have any Advantage from the Prosecution; for, unless that be Part of the Judgment, there must be a Multiplicity of Indictments instead of Actions, which is against the Policy of our Laws to admit of, where it may be prevented. The Interest of the Publick is so much concerned in a Judgment to abate a Nusance, that a general Act of Pardon, although it takes away the Fine, yet it cannot take away the Judgment to abate the Nusance; the King against *Wilcocks*, *Salk.* 458. *Vaughan* 333. The Law hath provided, that upon Indictments for Nusances, the Judgment shall be that the Nusance be abated, and the Forms of Judgments must be observed. *Roll. Abr.* 771. *pl.* 22. There are few Precedents of Forms of Judgments in Indictments for Nusances. But in *Bro.* Tit. *Nusance* 39. in an Assize of Nusance for digging a Ditch, the Judgment of the Court shall be, That the Nusance be removed, and the Defendant amerced; so in the *Old Book of Entries* 144, *C.* in an Assize of Nusance for diverting a Water-Course, the Judgment is, That the Nusance aforesaid be removed, and the Trench stopt up, and that the Plaintiff shall recover damages. And it is no Objection to the Defendant's taking Advantage of this Error, to say that the Judgment omits a thing which is in his Favour, and for his Benefit. For where the Law prescribes a certain Form for a Judgment, and that Form is not pursued, it is no Judgment at all; and it would be unreasonable to execute it upon the Party. *Yelv.* 107. If a Man be convicted of a Nusance done in the King's Highway, he shall be commanded by the Judgment to remove the Nusance at his own Costs.

Mr. *Fazakerly* on the other Side argued, That the Abating of the Nusance was not a necessary Part of the Judgment, especially in the present Case, where it was only a transitory Nusance arising from one Act of dressing and putting Skins together, and there was nothing to be removed.

The Court seemed to be clearly of Opinion, that the Judgment was well enough.

Lord Chief Justice *Raymond* said, In an Assize of Nusance the Judgment is, only that so much of the Thing complained of as is the Nusance, shall be abated; as where an House is too high, only so much as is too high shall be abated. 9 *Co.* 53. *Godb.* 221. *Wynch* 3. In the present Case it is to be considered what is the Nusance, and of what Nature it is. Now the Erecting of the Mole cannot be the Nusance, for that was lawful and innocent, and it is the Abuse of it which makes the Nusance; for it is the steeping the Skins which corrupts the Air, and creates the Nusance. So that if the Judgment should be that the Mole should be abated, that would be giving Judgment to abate a Thing which of itself is no Inconvenience to the Publick. And in *Broke* and the *Old Book of Entries*, which have been cited, it appears that the Nusances there complained of, were of their own Nature permanent, and of themselves a Nusance. In the Case of a Diehouse, or other stinking Trade, the Judgment shall not be that the House shall be pulled down, for that would be most unreasonable, when it is not the House, but the Abuse of it, which is the Nusance. In this Case nothing can be abated but the Skins, nay and only the stinking Skins, for it is those only that are the Nusance. Indeed if this Mole was in its own Nature a Nusance, and could not be used but as such, it ought to be abated; but it is plain it may be made use of to other Purposes.

Mr. Justice *Reynolds:* Where the Erection of the Thing is the Nusance, there the Demolition of it is the proper Judgment. But in the present Case, the Erection is not laid to be the Nusance, but only the Misapplication of the Thing erected. Roasting Coffee was formerly held to be a Nusance, but how was that to be abated? not by pulling down the House in which it was roasted.

Mr. Justice *Fortescue* was very strongly of Opinion, that the Judgment was ill; He said that in all Cases of publick Nusances it was an essential Part of the Judgment, that the Nusance should be abated. 9 *Co.* 92, 96, 99. 2 *Roll.* 84. The Erection of this Mole is the Cause *sine qua non* of the Nusance, and the only effectual way of preventing the Defendant from repeating the same Act which is complained of as the immediate Nusance, is to remove the Mole in which the Nusance is committed. In the Case of a Glass-house the Judgment was that the Nusance should be abated, and yet the Glass-house was a lawful Erection, and the Misapplication of it only could be called the Nusance. *Salk.* 458.

Afterwards, in *Hilary* 13 *George*, the Court affirmed the Judgment, unless Cause, and no Cause was shewn on the Day.

Hilary, Tenth of *George.*

Parish of Munger-hunger *against* The Parish of Warden.

AN Exception was taken to an Order of Justices for the Settlement of the Poor, for that it is said to be made upon *due Examination*, without saying that Examination was taken upon Oath. And upon an Appeal from this Order the Quarter Sessions quashed the Order for this Irregularity, as they held it; and now the Order of Sessions which quashed the first Order was moved to be quashed upon a Suggestion that the Order of two Justices was a good Order; and the Order of Sessions was quashed.

For *by the Court*, It is enough to say the Order was made upon *due Examination*, without saying upon Oath, though the Statute directs the Examination to be upon Oath; for where it is said in an Order to be made upon due Examination, it shall be intended to be upon Oath according to the Statute. And in the Case of the Inhabitants of *Cirencester* this Term, it was held sufficient to recite in the Order, that upon due Examination of the Party, and upon his Affirmation, etc. without adding, that the Party was a Quaker; and that *living forty Days successively was not neesesary.*

And Mr. Justice *Fortescue* said, That *living forty Days off and on is making the Case stronger than living forty Days together in a Parish.*

Lord Chief Justice: Where an Order is made by Justices of Peace, and that Order is quashed at the Quarter-Sessions, and after the Order of Sessions is quashed in this Court, the Original Order shall stand, and the Justices have no Jurisdiction about it.

Easter, Twelfth of *George.*

The King *against* Lofield.

AN Order of Justices was directed to the Overseers and Church-wardens of the Poor of the Parish of *A.* and *B.* reciting, *Whereas* Complaint has been made before us, etc., That *C.* and *D.* his Wife are likely to become chargeable. Moved to quash this Order, because it does not appear to what Parish he is likely to become chargeable; for it should have said the Parish from whence he was removed. *It was held well enough.*

By the Court: And in the Adjudication it is said, *they and theirs*, so uncertain who is meant by it.

The same Term.

Parish of Maiden Bradley *against* Welford.

THE *Court* held that the Words, *It appearing to us upon Oath*, is a sufficient Adjudication in an Order by Justices, and that the Case in *Salk.* 478. to the contrary is not warranted by the Record; and that to say upon hearing an Appeal is sufficient to say there was one, without any express Averment of it.

The same Term.

The King *against* The Inhabitants of Agglethorpe.

AN Order of Justices was quashed upon Motion, for that it was directed to the Overseers of the Poor of the Parish of *B.* and to the Overseers of the Poor of the Parish of *A.* and no where mentioned in the Order in what Counties the Towns were.

Hilary, Thirteenth of *George.*

The King *against* the Inhabitants of Grumston in Leicestershire.

MOVED to quash an Order of the Justices directed to the Overseers of the Poor of the Parish *or Hamlet* of *Grumston*, because it does not certainly appear but there may be

both a Parish and *Hamlet* of that Name, and then it is not certain which of the Places is meant. Upon the Rule to shew Cause it was said, This Direction of the Order to, etc., of the Parish or *Hamlet*, is a good Direction, as it is Directed to, etc. of a *Hamlet;* in the original Signification *Hamlet* or *Ham* means as much as Vill. This is expressly so in the *Saxon* Chronicle, and in *Somner's* Glossary at the End of the *Decem Scriptores*.

To which it was answered, That in Orders the Court will never make good a Defect by *Intendment;* these may be two distinct Places, and a precise Certainty is required in Orders. A Parish or Vill may be intended; but a *Hamlet* is a District within a Vill, and they can hardly be intended to be the same; and through the whole Order the Direction is to the Overseers of the Parish or *Hamlet;* and it was adjourned.

The same Term.

The King *against* The Inhabitants of Fisherton Delamore.

EXCEPTIONS were taken upon Motion to quash an Order of Justices, which was thus, *Dorset ss. Whereas* Complaint has been made unto us *A.* and *B.* etc., of the County aforesaid. *Now* as in the Body of the Order the Justices are said to be Justices of the County aforesaid, but no County has been named, but in the Margin, so the *County aforesaid* cannot be supposed to relate to that set down in the Margin, but it ought to be expressed in the Body of the Order, and carried further than to the Margin; 2 *Keb.* 302, 303. not allowed. It is said in the Order, they are likely to become chargeable there, but not said chargeable to the Parish; the Charge may happen to their Relations, and not to the Parish. Not allowed on the Authority of the Case of St. *John Baptist* in *Peterborough*.

3. The Order sets forth, We do adjudge upon due Consideration. Now this is the Consideration of the Complaint, and perhaps it might be made by the Justices of their own thinking; for it should be mentioned the Order was made upon due Examination, and so are the Cases. The King against the Inhabitants of *Cirencester*, The King against *Muckle Warton*.

But *by the Court:* As the Order is said to be made upon due Consideration, that implies a due Examination, and therefore is well.

4. The Order is signed by *A.* and *B.* Justices, yet upon the Caption *A.* appears to be a Justice of the Sessions, and likewise a Justice who made the Order, from which the Appeal was made; in *Salk.* 607. a Justice of Peace was Surveyor of the Highways, and a Matter which concerned his Office coming in Question at the Sessions, he joined in making the Order, and his Name was put in the Caption, and the Order was quashed for that Reason.

But *the Court* over-ruled this Exception; and confirmed the original Order of two Justices, and the Order of Sessions which confirmed that Order.

Easter, Thirteenth of *George*.

Inhabitants of Macclesfield *against* Lithfrith.

MOVED to quash an Order of Justices for the Removal of a Woman from *M.* to *L.* on these Exceptions.

First Exception; It does not appear *L.* was a Parish, a Town or a Vill; not allowed.

Second Exception; The Order sets forth, *It appears to us upon Oath that*, etc. Now it should appear that the Oath was taken in the Presence of two or more Justices; but little Notice was taken of this Exception, and was disallowed.

Third Exception; The Order says, *Upon Complaint made to us by the Overseers of the Poor of the Borough of* M. etc. Now the Complaint should be made by the Overseers of the Poor of some Town, *Parish* or Vill, according to the Words of the Act; for a Borough may consist of many Parishes, and then here it is uncertain which of the Parishes of the Borough is agrieved. Upon this Exception a Rule was made to shew Cause. 2 *Lill. Abr.* 71, 272. 2 *Lill. Abr.* 636. Tit. *Venue*. *Raymond* 67.

Michaelmas, First of *George* the Second.

Parish of Pottern *against* The Parish of St. Giles in the Fields.

TWO Justices of *Gloucestershire* by Order removed a Man, his Wife and six Children to St. *Giles's;* that Parish without making any Appeal to the Sessions, procured an Order of two Justices of *Middlesex*, who sent the Man, etc. back into *Gloucestershire;* the Court made a Rule to shew Cause why this last Order should not be quashed, there being an original Order not yet appealed from.

Hilary, Second of *George* the Second.

Anonymus.

COURT declared that a Justice of Peace cannot take a Prisoner out of the Marshal's Custody for a criminal Matter; but in such Case the Justice should charge the Prisoner with such Crime, and at the Assizes or Sessions bring him up by *Habeas Corpus.*

Easter, Eleventh of *George.*

The King *against* The Inhabitants of Woolverly.

THIS was an Order of Removal, and the Exception taken to it was, That the Order set forth generally, that *Complaint had been made* to the Justices, etc. but did not say by whom the Complaint was made. And the Statute appoints that Complaint shall be made by the Church-wardens and Overseers of the Poor, and because the Complaint was not said to be made by them, it was insisted the Order was ill; *Comb.* 334. and Rule was made to shew Cause why it should not be quashed.

Hilary, Second of *George* the Second.

The King *against* Belvoir.

AN Exception was taken to an Order of two Justices, That it was directed to the Church-wardens and Overseers of the *Parish or Liberty* of *Belvoir;* that is uncertain and wrong; for the Justices should expressly say which it is, according to the Case of the King against the Inhabitants of *Grumston; Vill and Parish may be the same*, but *Parish* and *Hamlet* cannot. *Salk.* 501.

Easter, Second of *George* the Second.

The King *against* Church-wardens of Credenhill.

TWO Justices make an Order that the Defendants should forthwith pay unto *Joan Thomas* Widow, the Sum of three Pounds, which was in Arrear and due to her for keeping and maintaining *Mary Squire* a *Pauper*, from *April* 1727 to *July* 1728, and also allow and pay her one Shilling *per* Week till further Order. This Order being brought up by *Certiorari* was moved to be quashed, because the Persons who had signed it are not said to be Justices *of or for the County*, or that they are Justices at all, which is a fatal Omission, and goes to the Point of their Jurisdiction.

Second Exception; The Justices have no Power to order the Payment of Money from one Parishioner to another. Rule to shew Cause.

Hilary, Tenth of *George.*

The King *against* Smith and another.

THE Defendants were indicted as Overseers of the Poor, for not paying a Sum of Money to a Surgeon who had taken Care of a Pauper, pursuant to an Order of the Justices of

the Peace. And upon Mr. *Fazakerly's* Motion this Indictment was quashed; because it was an Order made relating to a Matter out of their Jurisdiction, having no Relation to the Relief of the Poor.

Michaelmas, Eleventh of *George.*

The King *against* The Overseers of the Parish of Chichester.

AN Order was made at the Quarter-Sessions, that the present Overseers should pay three Pounds to the preceding Overseers, being Money expended by them in Law Charges, This Order being removed by *Certiorari.*

Mr. Serjeant *Baynes* moved to quash it; because the Justices cannot make an Order to reimburse an Overseer; for their Orders made in Relation to the Overseers, are confined purely to the Relief of the Poor. An Overseer is not bound to lay out Money till he has it, and if he does, he must make a new Rate for the Relief of the Poor, and out of that he may retain to pay himself. The Statute 43 *Eliz.* expressly limits Rates to be made for the Relief of the Poor, nor can a Rate be made on any other Account. So is the Resolution in *Tawney's* Case, *Salk.* 531. And for these Reasons this Order was now quashed.

Easter, Eleventh of *George.*

The King *against* The Inhabitants of Shambroke.

AN Exception was taken to an Order made for appointing Overseers of the Poor, because it was not said in the Order that they were substantial Inhabitants, which are the Words of the Statute. And upon this Exception the Order was quashed.

Easter, Twelfth of *George.*

The King *against* The Inhabitants of St. Mary the Virgin in Marlborough.

AN Order for *Contribution, so long as the Justices should think fit*, was quashed; because the Justices have only a discretionary Power to charge the Parties to *contribute as much as they think fit*, and therefore the Duration and Continuance was out of their Jurisdiction.

Trinity, Twelfth of *George.*

The King *against* The Occupiers of Land in Baroughfen.

AN Order was made by two Justices upon the Statute 43 *Eliz. c.* 2 §. 3. to charge some particular Inhabitants in an extraparochial Place in *Boroughfen*, to contribute to a Rate for the Relief of the Poor of the Parish of *St. John Baptist* in *Peterborough*, which was not able to provide for its own Poor. The Statute is thus; "That if the Justices perceive that the Inhabitants of any Parish are not able to levy among themselves sufficient Sums of Money, for the Relief of their Poor, that then the said two Justices shall and may Tax, Rate and Assess any *other* of other Parishes, or out of any Parish within the Hundred where the said Parish is, to pay such Sum and Sums of Money to the Church-wardens and Overseers of the said poor Parish, for the said Purposes as the said Justices shall think fit."

Mr. *Reeve* and Mr. Serjeant *Pengelly* moved to quash it; because the Act which gives the Justices a Power to make Rates for the Relief of the Poor of a Parish who are unable to support their own Poor, authorizes them to tax *any other Parish* within the same Hundred, to the Charge of the Poor of the Parish who made the Complaint. But by this Order the Rate is charged upon particular Land-owners in *B.* who have no Method to reimburse themselves; when all the People who live in *B.* ought to have been rated by this Order; else the Justices out of private Resentment may throw the Load of such a Rate upon particular Persons and free the rest, which would be distributing unequal Justice. Besides *B.* has a numerous Poor of its own, and other Parishes in that Hundred are at little or no Charge from their Poor; so in Reason those Parishes should have been charged with this Rate, as best

able to pay it. Besides, this Order is wrong, for the Statute says, *Parishes* shall be ratable by the Justices, but the Order does not mention *B.* as a Parish, but barely that *B.* is lying and being in the Hundred aforesaid.

To which it was answered, That the Power given to the Justices by this Act, is to Tax any other of other Parishes, which must imply any other Person, and therefore as the Exception taken goes to the Validity of the Act itself, it is of no Consideration. And as to the other Exception, it appears, by a reasonable Certainty, that it lies out of the Parish of *St. John's;* because it has a different Name. But the Court disallowed this; but quash'd the Order upon the other Exception, which was, that *B.* is not said in the Order *to be another Parish*, which the Statute expressly requires; and for ought that appears it may be a Vill in the same Parish of *St. John the Baptist*, or no Parish at all.

N. B. If you tax Persons as out of a Parish, you must shew they are out of it. *Salk.* 481.

By Lord Chief Justice *Holt* there are two Ways by 43 *Eliz.* to make one Parish contributary to the Poor of another Parish, *viz.* either the Justices may tax particular Persons in Aid to that Parish which cannot relieve its own Poor, or they may Assess a whole Parish in a particular Sum, and leave it to the Church-wardens and Overseers to levy. A Contribution by adjacent Parishes may be in gross yearly. *Comber.* 242. other Cases cited were 1 *Vent.* 350. *Lutw.* 1566. 2 *Bulst.* 354. *Comb.* 6. 309. *Skinner's Rep.* 258.

Michaelmas, Thirteenth of *George.*

The King *against* The Inhabitants of Blackfryars in Chichester.

TWO Justices make an Order for keeping a Woman and some Children; and the Order being removed by *Certiorari* was quashed; because it does not appear the Poor belonged to that Place, or that they were likely to become chargeable.

The same Term.

The King *against* Pennoyr.

MR. *Verney* moved to quash two Orders of Sessions, which were made upon the Defendant, for the maintaining and relieving *Mary Pennoyr* who was his Daughter in Law. The first Order was in Nature of a Recommendation to the Defendant to relieve his Daughter in Law; and the second Order, after a Recital that she was a poor and impotent Person, that her Husband was either dead or beyond Sea, and not capable of relieving her, and that the Defendant was her Father in Law, and of sufficient Ability to maintain her, orders that the Defendant shall pay towards her Maintenance the Sum of two Shillings and six Pence *per* Week.

The *First Exception* was, That a Daughter in Law is not such a Relation as is within the Statute of 43 *Eliz. c.* 2. §. 7. There is no Relation in Blood between them, nor any Obligation upon him by Nature to relieve her, 2 *Bulst.* 345, 346. and *Easter* 5 *George*, the King against *Munday*, where it was held that a Son in Law was not bound to relieve his Mother in Law, which is stronger than the present Case.

His *Second Exception* was to the Form of the Order; the Statute points out and directs what Circumstances are necessary to intitle a Person to this kind of Relief, and expressly requires that the Person to be relieved be impotent and Poor, and that the Person ordered to relieve her be able and living in the same County. And as these are Circumstances which are required by the Statute, so they ought to appear to the Court in the adjudicating Part of the Order, and to set them out by way of Recital, which is the Manner they appear in, in the present Case, or Order is by no Means sufficient.

Third Exception; The first Order must be discharged, for it is only by way of Recommendation to the Defendant, and indeed is no Order at all.

Fourth Exception: The second Order is ill, because it appoints the Defendant shall pay two Shillings and six Pence *per* Week to his Daughter in Law, without appointing for what Time it shall be continued, which is uncertain and ill. Upon a Rule to shew Cause the Orders were quashed in *Hilary* Term following.

Hilary, Thirteenth of *George*.

The King *against* Reed.

MR. Serjeant *Baynes* moved to quash an Order of Sessions made to charge the Parson of a dissenting Meeting-house to pay to the Poor's Rates as an Occupier. The first Order was made by three Justices, and an Appeal from that Order to the Sessions, who reversed the first Order; and the Order of Sessions being removed by *Certiorari*, moved to quash it, and confirm the first Order.

It was said, That the Chapel in *Russel-street* was formerly an House; and since its Conversion, had paid the Poor's Taxes, *Salk.* 527. Held Hospital Lands chargeable to the Poor.

Mr. Justice *Fortescue* said, He thought the Hearers were as liable to pay the Rate as the Parson.

By the Court: He is not such an Occupier as is meant by the Statute, and it appears upon this Order that he is to be charged in respect to his preaching to a Congregation assembled in that Edifice, which is not a direct Charge, and therefore he is not rateable. Order was quashed.

Easter, First of *George* the Second.

The King *against* The Inhabitants of Holbeach in Lincolnshire.

THE Sessions made an Order that the Overseers of the Poor of the Parish of *H.* should pay five Pounds sixteen Shillings due to a Surgeon for the Cure of a poor Woman of a Fistula. This was removed by *Certiorari*, and moved to be quash'd, because the Justices had no Power to interpose in a Matter of this Nature. And on the Rule to shew Cause, no body appearing to defend the Order, the Rule to quash it was made absolute.

Michaelmas, Second of *George* the Second.

The King *against* The Overseers of Barnstaple.

THE Overseers had made a Rate, but some of the Parishioners thought the Rate too hard, and thereupon moved the Court to grant a *Mandamus* to the Defendants to make an *equal Rate*.

But *by the Court:* We cannot *do that*, for we will presume the Overseers will do Justice; we can grant a *Mandamus* to make a Rate; a *Mandamus* was granted this Term to the Justices of the Peace, to sign the Poor's Rate of three Hamlets, who had no Officers of their own. 2 *Bulst.* 354, 355.

Trinity, Second and Third of *George* the Second.

The King *against* The Inhabitants of Wrexham Regis.

MR. Serjeant *Wynn* moved to quash an Order of Sessions made at *Denbigh*, which set forth, that upon hearing the Appeal of *A.* and *B.* against a Poor's Rate, made upon the Inhabitants of *Wrexham*, complaining of his being over-charged in the said Assessment for his dwelling-house, and it appearing to this Court, that the said Place was formerly charged after the Rate of twenty Shillings a Year only, it is ordered by this Court, that the said Dwelling-house be charged after the Rate of twenty Shillings a Year as formerly, and no more; for the Justices have not a Power to fix and settle a constant and standing Rate on an House, etc.

Mr. Justice *Reynolds:* The antient Rate is not obligatory, but if there have been no Improvements it may be a good Reason to continue the antient Rate; and quash'd the Order as void; because the whole related to a future Payment of Rates. *Salk.* 526.

The same Term.

The King *against* The Inhabitants of Wrexham.

A RATE was made by two Justices of two Pence in the Pound, and an Appeal was made from this Order to the Sessions. The Sessions order an Application of the Money

evied, but annul and vacate the Order; and this Order being removed by *Certiorari*, Mr. *Wynn* insisted it was an Inconsistency to annul *an Order*, and yet order a Distribution of the Money levied by Virtue of *that Order*.

By the Court: We will quash that Part of the Order of Sessions which disposes of the Money, by ordering it to be paid over to the succeeding Overseers, and confirm the rest of it. He urged that a Rate was an intire thing, and could not be quashed in Part and confirmed in Part, which the Court agreed, and said they did confirm that Part of the Order that annuls the Rate which went to the whole Rate.

Michaelmas, Third of *George* the Second.

Anonymus.

THE Court refused to grant a *Mandamus* to the Overseers of the Land-Tax, to compel them to assess the Defendant, who was a Roman Catholick, in double, she now only paying three Shillings in the Pound.

Michaelmas, Third of *George* the Second.

The King *against* The Inhabitants of Wincanton.

A *MANDAMUS* was sent to the Defendant to make a Rate on an Affidavit, that a Rate had been made, which had been quashed on Appeal, and no Rate afterwards made. In *Hil.* 3 *Geo.* 2. the Church-wardens and Overseers return that they had made a Rate, and that the Rate had been quashed on the Appeal, and the Sessions had ordered them to make a new Rate, which they had already complied with, and had collected and received the Money thereon.

By the Court: This is a good Return.

Note; It is not necessary to return the Order of Sessions.

Easter, Third of *George* the Second.

The King *against* Humphreys.

MR. *Fazakerly* moved for a *Mandamus* to be directed to Doctor *Humphreys* a Justice of the Peace for the County of *Northampton* to sign a Warrant of *Distress* to be made on some Persons who had refused to pay the Sums assessed on them, by a regular Rate, for the Relief of the Poor of the Town of *Brackley*.

Against this Motion it was objected, That there was an Appeal now depending at the Sessions for an Inequality in this Rate.

Chief Justice: The Question is, What the Poor have to subsist on in the meantime? *Tawney's* Case in *Salk.* is that Overseers of the Poor shall not be reimbursed by a special Order, but may take their Money out of what is *raised by a subsequent Rate.*

The Court thought it was hard if they should interpose, and prevent the Proceeding on the Appeal. But however they must take Care of the Poor that they do not starve. But upon a Consent by the Parties to pay the Money with which they had been rated, the Court was of Opinion no Writ should be granted.

Easter, Third of *George* the Second.

Parish of St. Mary's Nottingham, *against* The Parish of Kirklington.

MOVED for a *Mandamus* to be directed to the Justices of Peace of the Town and County of *Nottingham*, commanding them to allow the Parish of *K.* the Expence and Charges their Officers had been put to, in keeping a poor Person from the Time of his Removal to the Parish of *K.* till the Time that the Order of Removal was discharged by the Sessions, upon the Appeal of the Parish of *K.* from it; this is what is ordered by the Statute 9 *Geo.* 1. *c.* 7.

§. 9. and has been allowed in the Case of the King against the Inhabitants of *Boston*, *Trin.* 10 *George*, and a *Mandamus* was granted.

Trinity, Third and Fourth of *George* the Second.

Anonymus.

A *MANDAMUS* was granted to three Justices of the Peace of the County of *Sussex*, to sign a Poor's Rate regularly made, for the Parish of *Battle*, which had been tendered to them, and they had refused to sign it.

Michaelmas, Fourth of *George* the Second.

The King *against* The Inhabitants of Foxeter,

A *MANDAMUS* had been granted, on the Common Affidavit, to the Justices of the County to allow, confirm and sign a Rate that had been made for the Relief of the Poor of this Town.

Mr. *Reeve* moved to supersede this Writ, because it had issued erroneously; and offered to read an Affidavit, in which was sworn that there were four Vills within this Parish, which have always been rated separately to the Poor; that each Vill had its separate Officers, and that separate Rates have been made already, and signed by the Justices, which Rates are still subsisting, and Money is collecting at this Time under those Rates, and therefore no Need of a general Rate, which is contrary to the Usage of the Parish, and if allowed will introduce Confusion,

By the Court: Make a Return to the Writ, where the *Mandamus* is ill directed, or any fatal Mistake in it, then this Court will supersede it, but nothing of that appears in this Case.

Then an Exception was taken to the Writ, that by the 43 *Eliz. c.* 2. two Justices had only Power to sign the Rate, but could not *confirm* it, which was the proper Business of the Sessions.

Michaelmas, Fourth of *George* the Second.

The King *against* Pike.

MOVED to quash a Presentment of the Overseers of the Highways of the *Hay-market*, on the Statute 8 and 9 *W.* 3. The Exception was, That the Presentment is given by another Statute which is made in general for repairing the Streets in the City of *Westminster*, for by that the Justices ought to take Care of the Repairs, and not the Inhabitants.

By the Court: Here is a Presentment made, and a Fine set; this being a Fact done, we cannot quash the Presentment; it must come on in the Paper.

Michaelmas, the First of *George* the Second.

The King *against* Bushfield and others.

AN Attachment was granted against the Defendant and several others, upon Articles of the Peace exhibited against them, in which the Prosecutor swore he was in Fear of his Life from *them or some of them.*

Upon this Mr. *Fazakerly* moved for a *Mandamus* to impower the Justices of the Peace in *Northumberland*, to take Security from three of the Defendants, upon an Affidavit that they are unable to travel to *London;* and he said the like Writ had been granted in *Seymore's Case.* The Court refused the *Mandamus;* because they could not delegate their Power; and they thought the Words of the Articles so uncertain, *viz.* from *them or some of them*, that they granted a Rule to shew Cause why a *Supersedeas* should not go. *Easter* 2 *George* 2. the Defendants being bound in *several* Recognizances taken by Consent, for their good Behaviour in *Northumberland*, to appear at *Westminster* the first Day of Term.

Mr. *Fazakerly* moved, on their behalf, That the Recognizances might be discharged, and their Appearances dispensed with; which was consented to by the Prosecutor's Counsel.

Trinity, Second and Third of *George* the Second.

The King *against* Lewis.

A *MANDAMUS* was granted to three Justices of the Peace of the County of *Brecknock*, to take Security upon Articles of the Peace, exhibited and *sworn* against the Defendant. It was granted in the Case of the Queen against *Seymour*, *Mich.* 6 *Anne*, where Articles of the Peace had been exhibited against the Defendant; and a *Mandamus* was sent to three Justices of *Wiltshire*, reciting the Exhibiting Articles of Peace against him, but that it appeared by Affidavit, he was so Sick and Ill, that he could not personally appear in our Court to give Security to keep the Peace. And in *Trinity* Term, in the third and fourth Years of his Majesty King *George* the Second, the Defendant's Appearance was dispensed with, on Account he was and had been ill of the dead Palsy for ten Months, and was now seventy-four Years old, and the Year for his keeping the Peace on the Recognizance being now expired, the Recognizance was discharged.

Hilary, Eleventh of *George*.

The Parish of St. Peter Gloucester, *against* The Parish of B. in Bristol.

AN Order was made by two Justices of the Peace, for the Removal of a poor Man into *Bristol*. In the reciting Part of the Order it was said, that the Man was likely to become chargeable to the Parish of *A*. but in the adjudicating Part it was only said, that he was likely to become chargeable, without saying to the Parish of *A*. and for this Reason Mr. *Reeve* moved to quash it.

The Court allowed this to be a good Exception, and said they would not take these Orders to be good by *Intendment*, and because the Parish was not named in the adjudicating Part, they would not take it to be the same Parish that was named in the reciting Part. The Statute gives the Justices a Jurisdiction only where the Person is *likely to become chargeable* to the Parish, and because this Order did not say to the Parish of *A*. the Court would take it strictly, and would never intend a Jurisdiction in the Justices, where they did not intitle themselves to it upon the Face of the Order.

The same Term.

The King *against* The Parish of Trinity in Chester.

AN Order was made for the Removal of a poor Man, his Wife and Children, into the Parish of *A*. as the Place of their last legal Settlement. And the Order set forth, *It appearing to us*, etc. That his (the Father's) Settlement is in the Parish of *A*. without saying that it was likewise the Settlement of his Wife and Children; We do therefore adjudge the Settlement of the Father, Wife and Children, to be in the Parish of *A*.

This Order being removed, the Exception taken to it was, That it ought to have set forth the Ages of the Children; and though it was said, that these are the Children, and they gain a relative Settlement, as Part of the Father's Family, therefore the Ages of them need not be set out. Yet the Exception was allowed by the Court to be good; *And this rule* was laid down, Every Order that concerns the Removal of a Father and his Children, ought to shew the Ages of the Children, for they may have gained a Settlement in some other Right, as by serving as Apprentices, as Servants, etc. therefore their Age ought to be set forth, that it may appear to the Court, that by Reason of their Infancy they have not gained any Settlement in their own Right, but have only a relative Settlement from their Father. *Seven* Years is an Age that the Court will presume a Child could gain a Settlement at, in his own Right; but if it appears upon the Order that the Child was above seven Years old, the Order must set forth, That such Child hath not gained a Settlement in his own Right. And if the Child hath gained no Settlement, then his Father's Settlement is derived of him.

Note; In this Case the Order was allowed good as to the Father and his Wife; though not as to the Children.

Michaelmas, Thirteenth of *George*

The King *against* The Inhabitants of St. Brecock.

MOTION to quash an Order of two Justices, which was to remove *J. T.* from the Parish of *Egleshaile* to the Parish of St. *Brecock*. The Order set forth, that upon *Examination* of the said *J. T.* it appeared that the Place of her last legal Settlement was in the Parish of St. *Brecock*, which very Examination they returned with their Order. And in Support of the Order it was insisted, That the Returning the Examination was the same thing as the Returning the Facts specially in the Order, and that if it appeared by the Facts, as stated in the Examination, that there was a good Settlement in *Egleshaile*, the Order ought to be quashed. But the Court would not suffer the Examination to be read; because it was not annexed to the Order, and said that the Justices were not obliged to return the first Examination; though the Words of the *Certiorari* were to return the Order with all things concerning it, for that would be trying a Fact here which was only to be inquired into at the Sessions, and would not quash it, for the Party may have Redress by Appeal.

The same Term.

The King *against* The Inhabitants of Oulton in Cumberland.

MR. *Fenwick* moved to quash an Order of Removal, which set forth that upon Complaint of the Church-wardens and Overseers of the Poor of the Parish of *Kirkbright*, unto us whose Names are subscribed, two of his Majesty's Justices of the Peace *in* the County aforesaid (*Quorum unus*) upon this Exception, That this Word *in* went to the Point of their Jurisdiction; for by this it appears they only lived in the County, *Salk.* 474. and had no Authority to make this Order, for it should have appeared that they were Justices *of* the County.

The Court held this a fatal Exception, and quashed the Order for that Reason. These other Exceptions were not moved.

1. The Order is directed to the Church-wardens and Overseers of the Poor of the Parish of *Kirkbright*, without saying in what County it is.

2. It is not said that *Oulton* is a Parish.

3. The Order is to remove *Clark* and his Family. There the Word *Family* is too general, and not certain who it relates to.

4. Here wants an Express Adjudication, for by the Order the Justices adjudge the Place of his last legal Settlement *was* at *Oulton*, instead of *is*. But *the Court* would not allow its being compared to the Case of a Conviction, where it is necessary it should appear the Party was summoned; for the Court in such Case will not presume the want of a Summons; but if really there was none, the Court will punish the Justices for such a Proceeding; the King against the Inhabitants of *Great Appleby*, *Easter* 1 *Geo* 1.

Easter, Thirteenth of *George*.

Anonymus.

MOVED to quash an Order of Justices for the Removal of a poor Person. *Isle of Ely, ss.* was in the Margin. The Order was to remove him from *A.* to *B.* in the *Isle of Ely*. But it does not appear in what County the Place he is removed to, or the *Isle of Ely*, is. Rule to shew Cause. 2. *Keb.* 206, 302, 303.

Trinity, First of *George* the Second.

The King *against* The Inhabitants of Swine.

MOVED to quash an Order of two Justices for the Removal of a Poor Woman and two Children. The Order stated the Matter specially, that *Mary* the Wife of *Peter Hog*, late of the Parish of *Swine* in the County of *York*, was brought to bed at *Rawley* in *Lincoln-*

shire, and adjudged the Settlement of the said *Mary Hog* and her Children, to be at *Swine* in *Yorkshire*.

Exception; It does not appear in the Order that *Swine* was the last legal Settlement of the Husband. Shew Cause.

Michaelmas, First of *George* the Second.

Inhabitants of Hartingford *against* The Inhabitants of Redborn.

TWO Justices made an Order to remove a poor Man, and directed the Order to the Church-wardens and Overseers of the Poor of the Parish of *H.* and the Church-wardens and Overseers of the Poor of the Parish of *R.* but when they come to the Adjudication of the Place of his last legal Settlement, they adjudge it to be at the said Parish of *Relborne*, which was insisted to be a Variance, and therefore ought to be quashed.

But *the Court* held, That though the Town was there spelt *Relborne*, yet the Word *said* being joined to it, ascertained it to be the same as *Redborne;* and as to the Objection, That *said* might refer to *Hartingford*, which was the last Antecedent to it,

The Court answered, That the sense of the Order would not admit such an Application, and would not quash it.

Trinity, Second of *George* the Second.

St. Margaret's Leicester, *against* St. Leonard's Shoreditch.

MR. Serjeant *Corbet* moved to quash an Order of Sessions, which confirmed an Order of two Justices, made to remove a Widow and six Children by Name, setting forth their respective Ages. And whereas it appears to us, by Certificate, that *J. M.* her Husband was last legally settled at St. *L.* they therefore send them thither.

First Exception; The Order does not set forth they were the Children of that Husband, and in Fact they were not, being the Children of a former Husband.

Second Exception; It does not say the Children had not gained a Settlement elsewhere, some of them being above the Age of seven Years, as appears in the Order.

Third Exception; The Justices have not adjudged that the Widow of this Man had not gained a subsequent Settlement since the Death of her Husband.

On the other Side it was said, It appeared they were *certificated* Children, and the Order has set out they were likely to become chargeable, but that really was not so, being *gratis dictum*. And the Order was quashed upon all the Exceptions.

Hilary, Second of *George* the Second.

The King *against* Great Aulne.

TWO Justices remove a Man and his Family from *A.* in *Warwickshire*, to *B.* in *Worcestershire*, being two of his Majesty's Justices of the Peace of the said County. Whereas it appears to us, etc. This being removed by *Certiorari* was moved to be quashed upon these Exceptions.

First Exception; The Justices here have set out no Jurisdiction, for the Justices of *Warwickshire* are here said to have made the Order; but *Worcestershire* is the last named, and *the said County* being the Words of the Order must relate to the last Antecedent, which is *Worcestershire*, and then the Justices of *Worcestershire* had nothing to do with a Matter in *Warwickshire*. But this appeared otherwise when the Order was read, therefore not allowed.

Second Exception; The Order is to remove a Man and his Family; the Word *Family* includes a number of Persons, it is too large an Expression, and *non constat* who they are. This was held a fatal Exception.

Third Exception; Here is no Adjudication that the Persons removed are likely to be come chargeable, but only by the Recital, *Whereas*, etc. this Exception was held to be

immaterial; and the Court quashed the Order as to the Family, but affirmed it as to the Residue.

Hilary, Second of *George* the Second.

The King *against* The Inhabitants of Mansfield.

AN Order was made by two Justices to remove *E. S.* and his Wife from *M.* to *S.* Moved to quash it on these Exceptions.

First Exception; It does not appear that they were likely to become chargeable by Complaint made by the Church-wardens of the Parish, who had a Right to complain of the Charge, but by the Church-wardens of the Parish to which they were ordered to be sent. This appeared otherwise on the Order, and was not allowed.

Second Exception; The Order is to remove a Man and his Wife, but it is said to be on Complaint, etc. that he and his Wife *is* likely to become chargeable, and not said *are* likely; this was not allowed, 2 *Keb.* 302. for the Settlement of the Husband is that of the Wife.

Third Exception; It does not appear in what County the Parish is, for the County is not named in the Body of the Order, but only in the Margin; the King against the Inhabitants of *Adelthorpe*, and other Cases support this; but this was not allowed, for there is a sufficient Reference.

Fourth Exception; The Order is to receive *them* or either of them, which is uncertain, but over-ruled.

Fifth Exception; The Commencement of the Sessions is not truly set out, for the Order is said to be made at the Sessions held on the 17th Day of *July* by Adjournment, which is more than a Week after the Feast of St. *Thomas Becket*, an illegal Time; and the saying the Sessions was held by Adjournment will not do, unless it be shewn when the Sessions began. The King against *Walker*, *Trinity* 10 *Geo.* 1. an Exception was taken to the Caption of an Indictment, which set forth, that at the General Quarter-Sessions of the Peace held on such a Day by Adjournment, was held ill, because it did not say at what Time the original Sessions was held. See the Statute 2 *H.* 5.

The Court said, The precedents are mostly so as this is, and do not set forth when the Sessions began; however they gave no Opinion on the whole, for the Dispute was referred to the Judge of Assize.

Trinity, Twelfth of *George*.

The Inhabitants of West Peckham *against* Routham.

UPON Motion to quash an Order of Removal, the Case was thus; In the Year 1720 an Order was made to remove the Family of *J. S.* from the Parish of *Capell* to the Parish of *Routham;* and upon an Appeal by *Routham* that Order was discharged. In the Year 1721, an Order was made to remove the said *J. S.* and his Family from *Capell* to the Parish of *West Peckham*, and upon an Appeal by *West Peckham* that Order was also discharged. In the Year 1724, the Parish of *Capell* procured an Order to remove the same Persons back again to *Routham*, and it did not appear in this Order of Removal, that they had gained any new Settlement in the mean time since their last Removal. The Question therefore was, whether the Court would intend any new Settlement in the meantime; which the Court declared they would not, and thereupon the Order was discharged. *Salk.* 489. Parish of *Pemberton*, *Trinity*, 1 *George*, The Parish of *Foster* against *Carleton*. *Hilary*. 9 *George*, *Underbarrow* against *Kendall* and *Cook*, *Hilary* 6 *George* 1.

Trinity, Thirteenth of *George*.

The King *against* The Inhabitants of Kingswood.

TWO Justices made an Order to remove a Widow and some Children, which set forth that, *Whereas* it appears to us that *A.* is the Place of her last legal Settlement, we do therefore adjudge it to be there. Moved to quash this Order, because there is no Adjudica-

tion, but that all comes in under the Recital *Whereas*, etc. The Court however inclined to think the Adjudication was well set out.

Another Exception was; That the *Ages* of the Children are not specified in the Order. Upon the Rule to shew Cause, the Order was quashed as to the Children, and affirmed as to the Removal of the Mother.

Michaelmas, Second of *George* the Second.

The King *against* The Inhabitants of Stoke.

TWO Justices made an Order to remove a Poor Man and his Wife; and moved to quash it on these Exceptions.

1. It does not appear there was *any*, or who made a *Complaint* to the Justices. It was resolved that an Order of Removal must appear to be made upon the *Complaint* of the Church-Wardens. *Comberb*, 254. Nay a complaint made *ex Officio*, from one not concerned is not sufficient; it may be the Parish are willing to keep them.

2. The Order is made to remove a Man and his Wife, who *is* likely to become chargeable, and it is not certainly alledged who or whether of *them, or either* of them, are chargeable.

3. The Order is to remove *them*, or either of them, and that is too uncertain.

4. The County is not named in the Body of the Order, but only in the Margin, and that has been held to be fatal in the Case of the King against *Addlethorpe*, the King against the Inhabitants of *Sherringham*, and in other Cases. Rule to shew Cause. 2 *Keb.* 302, 303.

Easter, Second of *George* the Second.

The King *against* The Inhabitants of Etwell.

TWO Justices made an Order to remove three Children; which Order was removed by *Certiorari*, and moved to be quashed.

1. The Order is said to be made upon the Complaint of the Church-wardens and Overseers of *Lenton*, but not of *Lenton* aforesaid, which was mentioned in the Direction of the Order.

2. Complaint is said to be made that they are likely to become chargeable, which we therefore adjudge, but do not say adjudge *to be true*, which ought to be.

3. The Ages of the Children are not set forth, and the want of that has been held fatal in many Instances.

4. The Order recites, *Forasmuch*, etc. These are therefore to require and command you, *that you, some or one of you*, do forthwith remove, etc. Now some or one of you, cannot command *Etwell* to convey.

5. The Order is directed to the several Churchwardens and Overseers of the Poor of the Parish of *Lenton* and *Etwell;* not said to be the Place of their Father's last legal Settlement; the King against the Inhabitants of *Applebey*, *Hilary* 11 *George*. And the Court quashed the Order for these Reasons in *Trinity* Term following.

Trinity, Second and Third of *George* the Second.

The Parish of Shobury *against* The Parish of Rossiter.

TWO Justices made an Order to remove a Man, his Wife and five Children, and set forth the Ages of the Children, some of which were of an Age capable of having gained a Settlement by their own Act; and Recite, That upon Examination into the Settlement of the Father, it appears he was an hired Servant in the Parish of *S.* and by such Service had got a Settlement in that Parish, and *thereupon* they adjudge that Parish to be the Place of the Settlement of them all. This Order was confirmed on an Appeal to the Sessions, and being removed by *Certiorari*,

Mr. Serjeant *Corbet* moved to quash the Orders, for by the State of the Order it appears the Settlement of the Adult Children was not under Consideration; and by this Word *thereupon*, it seems they have removed them upon the Foot of a Settlement derived from the Father, which is not of a direct Consequence to the Settlement of such Children. The Court quashed the Order as to such Children as might be capable of getting a Settlement of themselves.

Michaelmas, Third of *George* the Second.

The King *against* The Inhabitants of Windermer.

TWO Justices of the Peace made an Order to remove *M. R.* from the Vill of *Patterdale* to the Parish of *Barton*, and set forth that she had got no Settlement there, and orders the Church-wardens to convey her to *Applethwaite* in the Parish of *Windermer*, in the County of *Westmorland*. An Appeal was made to the Sessions, which confirmed the Order of two Justices, and the Parish of *Windermer* was ordered to keep the Woman. These Orders being removed by *Certiorari*,

Mr. *Reeve* moved to quash them on this Exception. The Orders are directed to the Overseers of the Poor of the Parish of *Windermer*; whereas the Direction should have been to the Overseers of the Poor of the Village of *Applethwaite* in the Parish of *Windermer*. For by the Statute of the 13 and 14 *Car. c.* 12. §. 21. "All the needy and poor Persons in every Township and Village in the eight northern Counties, shall be kept in the Township or Village where they inhabited or were last legally settled; and that there shall be yearly chosen, according to the Directions in the 43d *Eliz.* two or more Overseers of the Poor within every of the said Townships or Villages, who shall do and perform all and every the Acts and Powers, etc." and this being an ill Direction of the Orders, makes them bad, because not directed to the Officers of the Place, which was chargeable. Rule to shew Cause.

See the Construction of the 21 Section of this Statute relating to the Maintenance of the Poor, *Salk.* 123.

The same Term.

The King *against* The Inhabitants of Risely.

TWO Justices of the Peace made an Order to remove *J. S.* his Wife and two Children, a Boy and a Girl, from the Parish of *A.* to the Parish of D. afterwards two other Justices remove these Persons to the Parish of *R.* the first Order not being appealed from; and upon an Appeal to the Sessions the last Order was confirmed. All these Orders were removed by a *Certiorari*; and moved to quash the two last, on this Exception; Because as an Appeal was not made from the first Order, the second was made on no Foundation, and the Order of Sessions which confirmed the second must then drop of course; for if there is not an Appeal made from the first Order, it binds all Parties, and the last must be void, *Comb.* 353, 218, 226. in the last Case the Court would not quash the second Order, because it had been appealed from; *Salk.* 481. *The Court would not quash these Orders on this Exception*; But an Objection being made to the Order, That it did not express whose Children *the Boy and the Girl were*, the Court quashed the Order as to that Part, and confirmed it as to the rest.

The same Term.

Parish of Skeffreth *against* Walford.

TWO Justices of the Peace made an Order to remove a Woman and her Child from *S.* to *W.* and by that Order sent the Child, being two Years old, to the Place of its Birth, at a Distance from the Mother. This Order was confirmed at the Sessions upon the Appeal; and being removed by *Certiorari*, Moved to quash both the Orders, because in the first Order it is not said that the Party was *likely to become chargeable*, it only mentions in the Complaint made by the Church-wardens, that the Mother had asked Relief for the said *John* her Son, and that she was not capable of maintaining her said Child; but there is no Adjudication made by the Justices of its being so; what is alledged being only Recital. 2. The Child is removed to the Place of its Birth, but the Justices do not adjudge it to be a

Bastard, and being a Nurse-Child they cannot separate it from the Mother by Reason of the Care necessary to nurture so very young a Child, which none can be supposed so fit to administer as the Mother of it; and therefore it should have been sent with her to the Place of her Settlement. The Orders were quashed.

Easter, Third of *George* the Second.

The King *against* The Inhabitants of East Sherborne.

MOVED to quash an Order of two Justices, made for removing a Vagrant from *Godalming* in *Surry*, to *East Sherborne* in *Hampshire;* for by the Statute 12 *Anne, c.* 23. it is enacted, with respect to a Vagrant, that if the Place of his last legal Settlement cannot be found, then he is to be sent to the Place of his Birth; and it is not said in this Order, that the Settlement of the Party was not known. 2. This being a Child only of five Years old, is ordered to be removed, and by the Statute Children cannot be passed till they are fourteen. 3. They ought to be passed to the next County, but by passing from *Godalming* to *Sherborne* he is sent through another County. 4. By the Order one of the Justices does not appear to be of the *Quorum*, nor either of them. In *Trinity* Term following the Order was quashed, no cause being shewn.

Trinity, Third and Fourth of *George* the Second.

The King *against* The Inhabitants of Warnhill in Berkshire.

TWO Justices made an Order to remove *J. Hudson* and two Children, from the Parish of *Tooting-graveney* in *Surry* to *Warnhill*, in these Words, "It appeared to us that *J. H.* was an hired Servant, and served in the Parish of *W.* according to the Statute in that Case made and provided, which we adjudge to be true; and we do also adjudge, that the last legal Place of the said *J. H.* is at *Warnhill* in the County of *Berks.*" This Order was moved to be quashed on this Exception; Because there is no Adjudication in it, that the last legal Settlement of the Person removed was at *Warnhill*, the Word *Settlement* being left out. Mr. *Marsh* attempted to support the Order, that the Words last *legal Place* in the Adjudication were sufficient of themselves, without inserting the Word *Settlement*.

By the Court: Here is no Adjudication of a Settlement, and these Orders are never to be made good by Implication. Order quashed.

The same Term.

The King *aaginst* The Inhabitants of Minchin-Hampton.

TWO Justices made an Order, *Whereas Complaint is made unto us*, etc. that *J. Mayo*, etc. are inhabiting in the said Parish of *Bisley*, contrary to the Laws, etc. and *are now become chargeable* to the said Parish of *Bisley;* and we the said Justices having now examined the said *J. Mayo* on his Oath, do thereby adjudge that the last Place of the lawful Settlement of him the said *J. Mayo* is in the Parish of *Michin-Hampton* aforesaid. Mr. *Thomas Stephens* made an Objection to this Order, that the Justices have not made an Adjudication that he was *likely to become chargeable*, or that the Complaint is true, which the Court held fatal, and quashed the Order of two Justices, and the Order of Sessions which confirmed it.

Michaelmas, Fourth of *George* the Second.

The King *against* The Inhabitants of Gunnerside.

TWO Justices made an Order to remove a Man, his Wife and Children, from *Astwick* in the *West-Riding*, to *Gunnerside* in the *North-Riding* in *Yorkshire. West-Riding, ss. Whereas* Complaint has been made unto us, two of his Majesty's Justices of the Peace, *Quorum unus*, for the said Riding by the Overseers of the Poor of the Parish of *A.* in the said Riding, and directed to the Church-wardens and Overseers of the Poor of the Parish c

A. in the *West-Riding* of *Yorkshire*, and to the Overseers and Church-wardens of the Poor of the Parish of *G.* in the *North-Riding*.

Mr. *Fazakerly* moved to quash this Order, because the Justices who made the Order have not set out they had a Jurisdiction to make it.

It was urged for the Support of the Order, that *West-Riding* was in the Margin; then it appears by the Word *said*, that *A.* is in the *West-Riding*, and the Justices are described to be Justices of the said Riding, in which *Astwick* is, therefore they are Justices of the *West-Riding*. But the Court quashed the Order.

Hilary, Fourth of *George* the Second.

Parish of Simson in Buckinghamshire, *against* The Parish of Woaking in Berkshire.

TWO Justices remove a Man and his three Children of the Age of six, eight and nine, from *S.* to *W.* as the Place of their last legal Settlement. Upon an Appeal to the Sessions from this Order, and on full Debate, the Sessions quashed the Order of two Justices, with Relation to the Children, and confirmed that Part which respected the Father.

These Orders being brought up by *Certiorari*, Mr. *Reeve* moved to quash the Order of Sessions, because the Settlement of the Father is the Settlement of the Children, and that Right of the Father's is derivative to them, and they are to be settled at *W.* since the two Justices have adjudged *W.* the last legal Settlement of the Father.

By the Court: The Children may have got a Settlement by some Act of their own, in a Place distinct from that where the Father was last legally settled, and on that Account were not removable with him, for some of them might be bound Apprentices, and therefore the Order of Sessions, with regard to the Children, was right. And a Rule was made to shew Cause. *Easter*, 4 *Geo.* 2. on shewing Cause it was insisted by Mr. *Reeve*, against the Order, that the Children are of tender Years and ought not to be separated from the Father, and therefore the Order of Sessions is faulty in that particular. But it was said on the other Side, That the Ages of the Children were not set forth in the Order of Sessions, but only as it recited the Order of two Justices, and therefore, for ought that appears, they are removeable Children.

To which it was answered, When the Fact is stated in the original Order, and recited in the Order of Sessions, and not varied in the Recital, it becomes a Part of the subsequent Order, and must be taken to be true.

But *the Court* held, That Evidence might have been given to the Sessions, that these Children had got a Settlement by an Act of their own, especially it may be so intended, as the Sessions have adjudged the Order of two Justices to be wrong in that Particular; and nothing appearing in the Order of Sessions to shew that the Justices have acted wrongfully, the Order of Sessions must be confirmed.

Easter, Eleventh of *George*.

The King *against* Westly and others.

THE Defendants were indicted for rescuing of Goods taken in Execution, and were found Guilty. Now moved in Arrest of Judgment; and the Case was, The Indictment contained three Counts, the first of which set forth, that by Virtue of a Writ of our Lord the King of *Fieri Facias*, before the King himself duly and lawfully issued, the Sheriffs made out a Warrant for taking the Goods to satisfy the Plaintiff according to the Exigency of that Writ. And in the Recital of the Writ, the Parties Names were intirely omitted to be set forth. The first Question therefore was, Whether this was a sufficient Description of the Writ? And held by the Court that it was not. Then the second Count set forth a Riot, and an Assault by the Defendants upon the Prosecutor. And the third Count set forth an Assault only. It was argued in Support of the Indictment, That these are distinct Offences as laid; and the Verdict having found the Defendants Guilty generally, if the first Count be not good as to the Rescous, yet the two Counts, as to the Riot and Assault, shall be sufficient to support the Indictment and warrant the Judgment.

But *by the Court:* These two last Counts have Reference to the Writ and Warrant, and therefore the Offences mentioned in the two last Counts are confined under the general Circumstances of Execution in this Writ, which Writ failing by not being sufficiently described, the whole Charge against the Defendants is void.

But it had been otherwise, if the Battery and Riot had been laid absolutely in the Indictment, for they are Offences of a different Nature. But this Verdict finds them guilty of those Offences as described under that Restriction. The Judgment must be arrested.

Michaelmas, Twelfth of *George*.

The King *against* Philpot and others.

MR. *Fazakerly* moved to quash an Indictment for a Riot, which set forth that there was an immemorial Water-Course leading to an antient Mill, and that the Defendants being riotously assembled, did, with Posts and other Things, stop up and divert the Course of the said Water, whereby the said Water was hindered from coming to the said Mill, etc. Now it does not appear to be done *Vi* and *Armis*, and then it amounts to no more than a common Action of Trespass upon the Case. But the Court disallowed the Exception.

Michaelmas, Second of *George* the Second.

The King *against* Hays and others.

Before Lord Chief Justice Raymond.

THE Defendants were indicted, for that they did riotously and tumultuously assault, etc and take away from *William Dallow* 17 Buts of Beer, the Goods of the said *Dallow*. It appeared upon the Evidence that there was no Riot, and a Question arose, as the Indictment did not lay it over again as a Trespass, Whether the Defendants could be found guilty, and the Case of the Corporation of *Bewdley* was cited.

But the *Chief Justice* held, That he thought the Defendants might be convicted of the Trespass only, as well as in Felonies, where the Jury find the Party guilty of a lesser Offence than that charged in the Indictment.

Easter, Second of *George* the Second.

The King *against* Willington, Esq.[1]

THE Sessions made an Order that Defendant should immediately pay to four Labourers, five Pounds jointly, for work done in Husbandry, which the Labourers have demanded of him, and also forty Shillings Costs in proceeding for the Recovery thereof.

Moved to quash this Order on these Exceptions.

First Exception; The Order is grounded upon 5 *Eliz. c.* 4. but does not shew the Wages were agreeable to the Statute, or to the Retainer, and if it is not so specified in the Order by §. 20. such a Retainer is void, and the Wages are not recoverable.

Second Exception; The Order is unreasonable, for it requires the Defendant to pay the Money immediately, and does not give him a reasonable Time to pay it in.

Third Exception; The Order is to pay five Pounds to four Persons jointly, but does not say how much to each; so here is no Proportion made of the Payment, and each Labourer may be separately intitled.

Fourth Exception; The Order requires the Payment of the Costs of forty Shillings, but does not find the Justices have any Power by the Statute to give Costs.

Fifth Exception; The principal Exception was, That it does not appear any of the *Parties live*, or that the Work was done in *the County of Warwick*, or the Contract made there, and if not, the Justices have no Jurisdiction. *Carthew* 156.

The Court seemed to think the last was a fatal Exception, and that there was something in the fourth.

It was said in Support of the Order, that it was specially stated the Defendant made his

Defence by Counsel, and then it can hardly be supposed he lived out of the County. *Salk.* 441. And these Orders are to be favourably construed in Remedy to recover Wages, and the Court will intend a Jurisdiction by general Words. But the Court unanimously quashed the Order.

Hilary, Eighth of *George* the Second.

Shergold *against* Holloway.

THIS was an Action of false Imprisonment against Defendant, a Tithingman who justified under the Warrant of a Justice of the Peace; a Verdict was found for the Plaintiff, subject to the Opinion of the Court upon a special Case, which sets out the Matter, That Complaint being made on the Oath of one *White*, that *Shergold* refuses to pay him his Wages, etc. These are therefore to authorize you to cause him to appear before me or any other Justice of Peace, and these Words were also added, *Whereof give him Notice before whom to appear.* The Warrant was directed to the Defendant as Tithingman of the Parish. In arguing this Case three Questions arose, 1. Whether a single Justice has any Jurisdiction in case of Wages? 2. Admitting he had, Whether a Warrant by such Justice requiring an Arrest, will justify the Officer? 3. Whether this be a Warrant to arrest?

It was insisted, that the Sessions by 5 *Eliz. c.* 4. had only an implied Jurisdiction to order Payment of Wages, the Statute only giving them a Power to settle the Rates of Wages. Therefore a single Justice cannot be intended to have any Jurisdiction in such Case. *Salk.* 441. 5 *Mod.* 419. Sir *Thomas Jones* 47.

But secondly, Admitting such Jurisdiction, Whether the Party ought not to be summoned, and not have been arrested in the first Instance? The Law has great Regard to the imprisoning the Person, the Means must be executed according to the Rules of Law, and according to the Law of *Magna Charta.*

The Court will not intend the Jurisdiction of an Inferior Court, but it must be expressed so in this Case. It can only intend a Jurisdiction on Wages in Husbandry. This Warrant being for Wages generally, is bad. Then how far can the Officer Justify under this illegal Warrant? Action lies against the Officer for executing an erroneous Process. 1 *Vent.* 220. 2 *Lutw.* 395, 1560.

It was answered, That the constant Practice on 5 *Eliz.* must be considered; for the Words are, That Justices have Power to settle and *rate the Wages;* yet the Justices have had Indulgencies by the Court to make *Orders* for Payment of Wages, as appears by suffering the Admiralty to have Cognizance of Mariners Wages, though they have no Jurisdiction. But upon the Consideration that the Demands are small, and that the Men may be ready for Sea again, the Admiralty has been indulged with this Jurisdiction. The Courts of Law have not only indulged the Justices to execute their Authority in Cases of Wages, but have gone so far where the Orders are for Wages generally, to intend it within the Jurisdiction, unless the contrary appear on the Face of the Order; *Salk.* 441, 2. 484. and there are infinite Precedents where Orders of single Justices for Payment of Wages generally, as also for Wages of Husbandry, have been held good by this Court.

2. The Person before the Court is the Officer, and though this Warrant could be no Justification to the Justice, yet it is to the Officer. *Pressly* against *Dawson*, *Hil.* 1 *W.* 3. Held at *Ni. Pri.* by *Holt* Chief Justice, That the Collector of the Land Tax being fined by the Commissioners, who issued the Warrant to the Constable to levy the Money, in Evidence it appear'd that the Commissioners had not a Power to fine in that particular Instance, though in other Instances they had; yet held as they had a Jurisdiction to fine in some Cases, it was not the Duty of the Officer to inquire whether they had a Jurisdiction in that particular Instance or not; but as they had Jurisdiction in some Instances, it was a sufficient Justification to the Officer.

That from the tenor of this Warrant it appeared, that the Justice of Peace intended to impower the Defendant to arrest the Body; that the Words *cause him to appear* were synonymous to bring him before me; and that this Tithingman could not compel an Appearance without apprehending the Plaintiff.

Lord *Chief Justice* said, That as to the first Point, if it was a *Res integra*, it might be a very considerable Question, Whether one Justice had a Jurisdiction or not? But that Jurisdiction having been exercised for such a series of Time, did give a Sanction to the Jurisdiction, and it would overturn a Multitude of Cases, if it should be determined that one Justice had no Jurisdiction, and said the Court had been so far from denying that Jurisdiction, that they had favoured the Jurisdiction by intending in an Order for Wages generally, to be Wages in Husbandry, and therefore at this time of Day it would be wrong to make that Jurisdiction a Question.

As to the second, he said, That if the Justice has a Jurisdiction of the subject Matter, though he may mistake in his Execution of that Jurisdiction, yet it shall excuse the Constable or Tithingman, unless something is discovered in the Warrant, which from some express Law shews the Justice had not a Jurisdiction. Now in this Case, taking this to be a Warrant to arrest, that was certainly a Process, of which the Justice had no sort of Jurisdiction, and then it comes expressly within the Case in *Hob.* 63. and *Smith* against *Bowcher* of the last Term; in each of which Cases there was a general Jurisdiction of the Cause, but not of the Process, which was the Distinction, and concluded upon that Point, That the Defendant could not justify under this Warrant, for though it might be hard to say that a Tithingman should know the Law better than the Justice, yet it being a general Law, every one is obliged to take Notice of it.

As to the third Point said, if that was material to determine after the second thus considered, he should be under Difficulty about it, for it was not clearly a Warrant to arrest, the Words *cause to appear* may be by Summons, and though the Warrant goes on and directs the Officer to give Notice to the Prosecutor, which perhaps would be impossible for him to do with Certainty, unless he was to bring the Party with him; yet the Justice having no such Jurisdiction we will not intend he has done wrong, but rather otherwise; said he must own it was pretty oddly worded, for generally Warrants of Summons are to bring the Party before some certain Justice at some certain Time and Place; therefore Judgment was given for the Plaintiff.

Hilary, Thirteenth of *George.*

The King *against* Johns.

MOVED to quash an Order of Sessions, which set forth, that it appears to us, etc. that 100*l.* is in the Hands of the Defendant, an Overseer of the poor of *Lestwithiel.* We therefore order he shall pay it into the Hands of the Parson and two of the Inhabitants.

Exception; It does not appear how the Sessions have Power over this Money, nor that the Parson, etc. are proper Persons to receive it; but it ought to be paid to the Inhabitants in general, to be distributed by them as they shall Judge reasonable. Shew Cause.

Trinity, Thirteenth of *George.*

The King *against* The Inhabitants of Sutton upon Trent.

AN Exception was taken to an Order of Sessions, that there is no Adjudication in it; all that is said in the Order is, that by Advice of Counsel the Matter in Question should be referred to the Judgment of the Court of King's Bench. Now this is no Adjudication one way or other, and therefore the Order is imperfect; for the Sessions should have given Judgment in it, and let it have had its Fate. To which it was answered, That it was reasonable to encourage Justices of the Peace when they submit their Orders to the Opinion of the Court, for most commonly they make general Orders.

N. B. General Sessions are not Quarter-Sessions, for the Quarter-Sessions are appointed by 2 *H.* 7. *c.* 4. though by that Statute it appears there may be a General Sessions at a different Time, as in *London.* 2 *Salk.* 474.

Trinity, Second of *George* the Second.

The King *against* The Inhabitants of Cawood.

TWO Justices made an Order to remove a Man to the Parish of *Uleskelf*, who appeal'd to the Sessions by the Name of *Ulleskelf*, the Sessions discharged the Order of Justices; and now the Court was moved to quash the Order of Sessions; because the Appeal was from a different Parish. The Question is, Whether that is a Variance from that in the Order of Justices. These Cases prove it to be no Variance; for the Word may signify the same Place, though differently spelt. The Case in Sir *Thomas Jones* 219. Debt upon a Bond by *Edward Nonne*, Administrator of *G. Nonne*, etc. the Defendant after *Oyer* of the Letters of Administration, pleads in Abatement a Variance between the Letters of Administration and the Declaration, for in one he is called *Nonne*, and in the other *Nunne*; and upon Demurrer it was held by the Court, that the Words having the same Sound the Defendant must answer over. In 1 *Rol. Abr.* 797. *J. Broke* was returned upon a *Venire facias* to try an Issue, and *J. Brook* is sworn, yet held good without any Amendment or Examination, whether it be the same Person or not, for they are the same Sound. In *Cro. Eliz.* 258. in the *Distringas Juratores* the Defendant was named *Shacraft*, but in the *Venire facias* he was truly named *Shacroft*; and so in the other Proceedings; this *Misnomer* was alledged in Arrest of Judgment, but awarded to be amended, and Judgment for the Plaintiff. So a Juror was named *J. S.* of *Abbotsan*, and returned upon the *Distringas J. S.* of *Abbasan*, and ordered to be amended, *Cro. Eliz.* 258. So a Juror in the *Venire facias* was named *Dehust*, and in the *Distringas Dehurst*, but held good, and Judgment for the Plaintiff. *Oliver* against *Tongue*, *Stiles*. In 3 *H.* 4. 4. Debt against *Baxster* upon a Bond; Exception that it was brought against *Baxter* without an *s*; and held no Variance. In the Case of *Young* against *Slaughterford*, *Trinity* 8 *Anne*, which was an Appeal of Murder; and moved in Arrest of Judgment, that one of the Jury was named in the *Venire Chidingford*, and in the *Distringas Chiddingford*; and held no Variance; *Ponsanby* and *Pansanby* no Variance; *Cro. Jam.* 354. But in *Cro. Jam.* 116. in the *Venire facias Cullard* was named and returned in the *Distringas*, but the Panel annexed and returned *Constantius Callard*, and held to be Error. In 8 *Anne*, an Order of Justices was removed by *Certiorari*, and an Exception taken that the Order was made upon *Flixton*, but the Order, as appeared upon the Return of the *Certiorari*, was made upon *Flickston*; and held no Variance by Mr. Justice *Probyn*. *Brook* against *King*, Action for rescuing a Distress, and the Declaration set forth that *Calisthenes Brook* made a Lease, etc. and in the Lease given in Evidence it was *Calasthenes*, and the Plaintiff was nonsuit for this Variance; tried at *Guildhall* before *Lord Raymond* in *Trinity* Term in the 3 and 4 *George* 2. Error was assigned of a Judgment in the Common Pleas, because upon the *Venire facias* one *Randal Sewel* was returned, and so in the *Distringas*. And the Sheriff returned *Rannus Sewel*, who was sworn, but not allowed. For the Court shall intend *Randal* and *Rannus* to be both one Person, and that it is his Name briefly written. *Cro. Jam.* 28.

And *by the Court:* There is a plain Difference between *Waking* and *Woking*, for by what appears they may be two different Parishes. *Lisney* in the *Hab. Cor.* made *Listney* to agree with the *Venire facias*, because the Sound is alike. *Hob.* 64.

Hilary, Second of *George* the Second.

The King *against* The Inhabitants of Glaston in Rutlandshire.

UPON a Rule to shew Cause why an Order of two Justices should not be quashed, which appeared to be made for the Removing *A.* from *C.* to *D.* though there had been a prior Order of two Justices for removing him to *B.* confirmed at the Sessions, and there had not passed forty Days since, in which he could possibly gain a subsequent Settlement.

It was urged that the last Order was to remove *Hales* and his Wife, and the former only to remove *Hales*.

But *by the Court:* We will intend it was the same Man, and this Order must be quashed.

Another Exception to the Order of Sessions, That it did not appear to be made upon Appeal, without which they have no Jurisdiction. *Salk.* 479. This the Court admitted was a fatal Exception, but said if the Order of two Justices be good, that must stand as not appealed from.

Hilary, First of *George* the Second.

The King *against* The Inhabitants of Belvoir.

MOVED to quash an Order of Sessions upon which there had been no Adjudication; but the Judgment of the Court was suspended.

The Exception was, It appears in the Body of the Order, that *Belvoir* is an extraparochial Place, and that there neither now is, nor ever was, an Officer in the Place, neither Church-wardens nor Overseers, nor any Inhabitant, except one Person, that keeps an Alehouse. In *Salk.* 486. it was held by *Holt, Chief Justice:* If a Place is extraparochial, and has not the Face of a Parish, the Justices have no Authority to send any Man thither.

Note; In the Margin of that Case in *Salk.* it is said in the Case of *Stokelane* against *Dolting, Hill.* 11 *Anne*, it was adjudg'd by *Parker* Chief Justice and the whole Court, That by Virtue of the 13 and 14 *Car.* 2. *c.* 12. §. 21. the Justices may exercise the Power given by 43 *Eliz.* and that Act, in all extraparochial Places, containing more Houses than one, so as to come under the Denomination of a Vill or a Township. And this Order was quashed; because a Person cannot be sent to an extraparochial Place for want of proper Officers.

Trinity, Second and Third of *George* the Second.

The King *against* Robe.

MR. Serjeant *Baynes* shewed Cause why an Order of Sessions should not be quashed on an Exception taken to it, that the Justices had no Jurisdiction in the Matter, the Order being, that the Money shall be borrowed of the Treasurer of the County Stock, and that it shall be repaid and replaced out of the County's Rents, as the Court shall direct. The Queen against *Savin. Salk.* 605. 8 and 9 *W.* 3. *c.* 17.

Lord Chief Justice *Raymond:* If we should confirm this Order, I doubt we shall go further than we are warranted by Law. But the Court quashed the latter Part of the Order as to the Repayment of the Money out of the County Rents, but would not quash the other, being but the Declaration of the Sentiments of the Justices.

Michaelmas, Fourth of *George* the Second.

The King *against* the Inhabitants of Arundell.

AN Order of Bastardy made by two Justices upon *A. B.* that he was the Father of the Child, was *confirmed* by the Sessions upon Appeal. The putative Father appealed from this Order of *Confirmation* to a subsequent Sessions, and the second Sessions quashed the Order made by the first. This Order being removed by *Certiorari*, a Motion was made to quash the Order of the second Sessions as irregular; for the Order of two Justices being confirmed upon Appeal, the Order of Confirmation by the first Sessions is conclusive to the reputed Father. This is like the Case of the Parishes of *Harrow* and *Ryslip* in *Salk.* 524. where it was held, that an Order of Removal, confirmed upon an Appeal, is final against all Parishes; so is *Salk.* 527. And a Rule was made to shew Cause. See *Pidgeon's* Case, *Cro. Car.* 341.

Hilary, Fourth of *George* the Second.

The King *against* the Parish of St. Nicholas.

THE Sessions made an Original Order, that the Parish of St. *Nicholas* do take care of *William Gould*, a Youth of Eight Years of Age, Son of *William Gould* a Sojourner

in that Parish, who died lately there. This Order being removed, the Court made a Rule to shew Cause why it should not be quashed, on an Exception taken to it, that the Sessions have not a Power to make such an Order.

Hilary, Twelfth of *George.*

Parish of Stone *against* The Parish of Kniver.

UPON an Order for the Removal of one *Kidson*, his Wife and Children, the Court adjudged that the Renting of a Cony-Warren, at ten Pounds *per Annum*, was a sufficient Tenement to gain a Settlement within the Meaning of the Statute of the 13 and 14 *Car.* 2. *c.* 12. So the Renting a Water-Mill was adjudged a sufficient Settlement. *Salk.* 536. 1 *Show.* 12. *Faresly* 54. *Skinner* 268.

Hilary, Twelfth of *George.*

Parish of Chidderton *against* The Parish of Westram.

UPON a Motion to quash a special Order of Sessions, the Case was thus: The Order set forth that one *Elizabeth Pinchen* had sworn that her Husband had told her he was born in *Wiltshire*, but that he had never informed her, nor did she know, within what Parish in that County. All the Court was of Opinion, that she was settled at *A.* for it not appearing that her Husband had gained a Settlement in any particular Place ascertained, to which she could be removed in her Husband's Right, the Husband as to her was to be considered as a Vagrant, who had no Place of Settlement, and consequently that her Right of Settlement remained in the Place where she had gained a Right before she was married.

Michaelmas, Twelfth of *George.*

Anonymus.

A MAN was hired for a Year, and had Wages paid him for a Year's Service; he lived where he had Served this Year, and the Justices made an Order to remove him to the Place of his last legal Settlement. The Order mentioned that he, without any Compulsion, quitted his Service a Week before the Expiration of the Year, and the Question was, If this was such a Service as might gain him a Settlement within the Letter of the Act of Parliament of the 8 and 9 *W.* 3. *c.* 30. and a Rule was made to shew Cause.

Hilary, Tenth of *George.*

The Inhabitants of St. Giles's Reading *against* The Inhabitants of Eversley Blackwater.

W. C. was born in the Parish of St. *Giles*, and was bound an Apprentice for seven Years in *B.* where he served two Years; his Master failing in Circumstances he removed back to St. *Giles's*, there he married, had three Children, and there he died; and by Order the Mother and Children were sent to *Blackwater.*

Mr. *Reeve* moved to quash the Order for these Reasons, That the Mother and Children could not take any Benefit of the Father's Right of Settlement after his Death, seeing they had not taken any Advantage of it in his Life-time, but had waived that and fixed at another Place.

By the Justices *Eyre* and *Fortescue:* The Wife and Children must be sent to the last legal Settlement of their Father, for his Settlement is their Settlement, and Birth makes no Settlement, but in case of a Bastard, who is not considered as a Child of any, and is therefore a Vagrant, and can gain no Settlement but by Birth.

It was ruled by all the Court upon Argument, that the Order which sent them to *B.* the last legal Settlement of the Father must be confirmed. Where a Father gains a second Settlement after the Birth of his Child, that Settlement is immediately communicated to the

Child. It is agreed, if the Father had been living, they might have been sent to *B.* but then his Death makes no Alteration, because it is a derivative Right from the Father to the Children, which cannot be evaded whilst the Children are under such Years as render them incapable of gaining a Settlement by some Act of their own; and the Father having got no Settlement at St. *G.* when he died, their Settlement was at *B.* the last legal Settlement of their Father. This Case differs from that of a Master and Servant; what the Servant does according to the Rules prescribed by Law to gain a Settlement, is his own Act, *viz.* his Service, and is not continued to him by any Right from his Master. For if a Man hires himself to a Master in *B.* and the Master's legal Settlement is in *A.* if the Servant remains in his Service at *B.* for *forty Days*, he gains a Settlement at *B.* and not in *A.* the true and only Place of Settlement of the Master, which shews the Settlement is there acquired by a local Service, and that is the Act which makes the Settlement. But a Child may be sent to the Place of the Father's Settlement without having been ever there before; it is the Inheritance of a Child, but the Right of a Servant as the mere Effect of his Service. The Case of *Spittle-Fields* against *Whitechapel*, 10 *W.* 3. is not parallel to this; there Birth gained the Child a Settlement, but the reason was because the Settlement of the Father could not be found, and such a Child is accounted *filius Populi*. And where the Father's Settlement cannot be found, yet if the Mother's can, the Child shall have the Benefit of that, and in this Case the Children shall not be made Vagrants where the Father's Right is descended to them. The Order of Removal must stand.

Trinity, Ninth of *George.*

The King *against* the Inhabitants of St. Paul's Shadwell.

UPON a Motion to quash an Order of two Justices, it was resolved by Mr. Justice *Eyre* and Mr. Justice *Fortescue*, That where the Father being a Foreigner had no Settlement, the Children should have the Benefit of the Mother's Settlement, for that her Right should descend to them, and they should not be sent to the Place of their Birth.

Faster, Eleventh of *George.*

The King *against* The Inhabitants of Whitechapel.

UPON a Motion to quash an Order of Sessions the Case was thus: *A.* kept a Glass-house in the Parish of *Whitechapel*, and hired *B.* for five Years, to work at this Glass-house at the Rate of ten Shillings a Week, *B.* never lodged with *A.* in his House any Part of the Time, but lodged at another House in the Parish; and on a Dispute where *B.* should be settled, the Justices adjudged his Settlement to be in the Parish of *Whitechapel*; which Order being removed by *Certiorari*, Mr. Serjeant *Hawkins* moved to quash it; because he said this was not such a Service as was intended by the Statute of 3 and 4 *W.* and *M.* for this Man having never lodged in his Master's House could not be considered as Part of his Master's Family, and therefore was not such a Servant as could gain a Settlement by the Statute.

By the Court: The Order is good, and *B.* has gained a good Settlement in *Whitechapel*; for being hired to serve above one Year, and having served and resided in the same Parish pursuant to such hiring, he hath fully complied with the Statute, and it is not material whether he lodged at his *Master's or at another House, so that it be within the same Parish.* Order affirm'd.

Michaelmas, Eleventh of *George.*

The King *against* The Inhabitants of Wyley in Wilts.

UPON an Order of Sessions the Case was thus: *J. S.* being a poor Man built a Cottage upon the Waste belonging to my Lord *Pembroke*, without his Licence, who never offer'd to disturb *J. S.* in his Possession, and he lived in this Cottage for thirty Years, and

by his Will left three Guineas in the Hands of his Executors to purchase this Cottage of my Lord *Pembroke*. Upon his Death *Elizabeth*, his only Child and Heir at Law, entered into the Cottage, and after married one *Barrow*, and they lived in the Cottage and were in quiet Possession for three Quarters of a Year, and then sold it. The Question was, Whether the Daughter of *J. S.* and *B.* her Husband had gained a Settlement, by Virtue of this Inhabitancy, in the Parish of *Wyley*, in which this Cottage was. Mr. *Reeve* argued that this Inhabitancy gained no Settlement. The Cottager was a Disseisor, and had no Right to build upon the Waste, and was at any time removable by the Lord of the Waste, and if he might have been removed within forty Days, his long Possession shall give him no Title, for he must only be considered as a Tenant at Will, and consequently his Continuance upon the Cottage, though never so long, could give him no Settlement; and if the Cottager had no Right of Settlement, none claiming under him shall be in a better Condition. The Statute of 31 *Eliz.* prohibits the Building of Cottages, therefore the Erection of one is unlawful, and shall have no Privilege or Encouragement. I admit, if one inhabits by Virtue of a Lease, or other good Title, for forty Days, he gains a Settlement. But the Inhabitancy in this Case was without any good Title, and consequently can gain no Right of Settlement. These Objections were answered by the Court, who held it clearly to be a good Settlement. And though it was further objected, that the Cottager himself was sensible he had no Right, by his devising Money for the Purchase of a Term under the Lord of the Waste, yet it was over-ruled.

And *by all the Court* it was held, That when a Man hath such a Possession as he cannot be removed from, and hath enjoyed that Possession forty Days, he thereby gains a Settlement, and that is the Reason why a Copyholder or Lessee for Years gains a Settlement by an Inhabitancy for forty Days; for in those Cases the Justices of Peace cannot determine his Right; this present Case is very strong, *for the thirty Years Possession of the Cottager, without Interruption, would have been a good Title in an Ejectment;* and for that Reason the Justices of Peace cannot determine his Title. It appears upon the Face of the Order, that the Cottager had a good Title against all the World, *except* the Lord of the Waste, and against him he had a good Title in Ejectment, and in any Case but in a real Action.

Lord Chief Justice *Raymond* said, He had known Recoveries upon a twenty Years quiet Possession, and twenty Years Possession is a Title to a Plaintiff in Ejectment as well as to a Defendant. After so long a Possession as this, it shall be presumed that the Cottager had a Licence to erect the Cottage; but this Case goes further, for besides the thirty Years quiet Possession of the Cottage, here is a Descent cast upon the Daughter who was Heir to the Cottager, and *prima facie* it is an Inheritance in the Daughter, and an Estate by Disseisin is in Law a good Estate, and a Fee-simple, till it be defeated. Wherefore all the Court held that the Justices had no Jurisdiction in this Case; for they could not examine the Title to Land; and the Settlement in the Parish of *Wyley* was adjudged to be good. And quashed the Order made to remove *Barrow* and his Wife to *D.* the Place of *B.*'s last legal Settlement in *Somersetshire.*

Michaelmas, Thirteenth of *George.*

The Parish of Paulesberry *against* Woodend.

UPON a special Order of Sessions the Case appeared to be, that a Man with his Wife and Child were settled in *Paulesberry* at his Death, after which the Wife removed to a Copyhold Tenement of her own in *Woodend*, and carried the Child (being 14 Years of Age) with her, and the Child lived there many Years; and now it came to be a Question where the Child was settled, and the Justices adjudged that it gained no Settlement with the Mother, and therefore sent it back to the Father's Settlement in *Paulsberry*, which Order Mr. Reeve moved to quash, insisting that the Settlement was in *Woodend*, where the Mother was settled, which was determined between the Parishes of *St. George* and *St. Catherine* in *Michaelmas* 1 *George.* And upon Consideration the Court quashed the Order, saying it had been adjudged to be settled with the Mother in that Case of *St. George* and *St. Catherine;* but if this had been a new Case, the Court said, they should have doubted whether the

Settlement gained under the Head of a Family could be devested by a derivative one from the inferior.

Michaelmas, Thirteenth of *George.*

The Parish of Portsmouth *against* St. Maurice in Winchester.

THE Case was thus stated upon a special Order of Sessions: An Order of two Justices removed *Nicholas Mould* from the Parish of *Portsmouth* to the Parish of St. *Maurice* in *Winton;* and the Fact appeared to be, that *Mould* in the Year 1689, after the making of the Statute *Jac.* 2 and before the 3 and 4 *W.* and *M.* was hired as a weekly Servant to one Captain *A.* who then quartered in *Winchester* with his Company, and that he abode two Months in such Service, and was paid seven Shillings *per* Week Wages, and found his Board, but lodged at the same House with his Master, which was an Inn at *Winchester*, but never received any Pay, nor was regularly listed as a Soldier; and upon the whole the Sessions adjudged him to be settled at *Winchester.*

Note; By the Statute 12 *W.* 3. *c.* 4. no Retainer is required, and *Notice* in Writing which is required by the Statute 1 *Jac.* 2. does not extend to hired Servants. And to this the Case of the King against *Warminster, Mich.* 8 *George* was cited as a Case in Point. And it was insisted, that this Stay of his in the Parish of *St. Maurice* was not such a Stay as could gain him a Settlement there.

Mr. Justice *Fortescue* held, That a weekly Servant was not such a Servant as could gain a Settlement, being considered but as a Day-Labourer. But the rest of the Court inclined that the Settlement was good, inasmuch as the Contract between the Master and the Servant continued, and during the Continuance of the Contract the Servant was not removeable. And Mr. Justice *Reynolds* held, That it was the Nature of the Contract, and not the Duration of it, which distinguished a Labourer from a Servant. A Rule was made to quash the Order, unless Cause, the first Day of the next Term.

Easter, Thirteenth of *George.*

The Parish of Kimpton *against* The Parish of St. Paul's Walden.

AN Order of Sessions being removed by *Certiorari*, which had quashed an Order of two Justices for the Removal of *Andrews*, his Wife and five Children, from *W.* to *K.* An Exception was taken to the Order of Sessions, which stated the Matter specially, That a Surrender was made in 1724, of a Copyhold Estate, by *J. S.* to himself for Life, and after his Death to *Andrews;* and that in the Year 1720, *J. S.* surrendered to *Andrews*, which was insisted to be inconsistent; for if the Surrender was in 1724, then it ought to be a Purchase of the Value of 30*l.* according to the Statute 9 *George.* To which it was answered, That the right Order was made in 1714, and not in 1724, and an Affidavit was produced from the Clerk of the Peace, which shewed this was a Mistake. Upon this the Rule was enlarged, and a new *Certiorari* awarded to return the right Order.

And *the Court* said, This was a better Method than to amend the Return, which they doubted whether they should do. Upon the Return of the last *Certiorari*, it was moved to quash the Order, but denied on that Point. Then another Exception was taken, that the Purchase was fraudulent; for it appears the Church-Wardens had advanced him forty Shillings to pay the Fine, for which Sum he stood charged Debtor in the Parish Book. *Contra*, as the Justices have found no *Fraud*, this Court cannot adjudge it to be a Fraud on the Face of the Order. This Case is like a special Verdict; if the Jury find the Circumstances of Fraud, and do not determine it actually to be a Fraud, this Court will not intend any. So in Trover, a Demand and Refusal is good Evidence for the Jury to find a Conversion, yet though they find a Demand and Refusal, but do not find the Conversion, this Court cannot adjudge it to be a Conversion. Which the Court agreed, and affirmed the Order of Sessions. 10 *Co.* 56. Chancellor of *Oxon's* Case. Fraud ought not to be conceived unless expressly found, for *Fraus est odiosa, et non præsumenda.* Lady *Gore's* Case, 10 *Car.* 1. 2 *Co.* 25. *Cro. Car. Crisp* against *Pratt*, towards the End of the Report.

Michaelmas, First of *George* the Second.

The King *against* The Inhabitants of Ayno in Northamptonshire.

MOVED to quash a special Order of Sessions which had quashed an Order of two Justices. A Man was hired for a Quarter of a Year, and served that Term. After he was hired for a whole Year, and served upon that only three Quarters of a Year. The Question was, Whether this Hiring and Service did gain him a Settlement. It was argued for the Settlement, that there was a Hiring for a Year, and a Service for a Year, and thereby the Words of the Act are fulfilled; and these Cases were cited by Mr. *Reeve* to be Cases in Point. *Hil.* 1 *Geo.* 1. Parish of *Brightwell* against the Parish of *Westhallam*, *Hil.* 10 *W.* 3. Parish of *Overton* against the Parish of *Stephenton*. And it was argued for the Settlement under this Hiring and Service, that it had been adjudged, if a Man rents a Tenement of seven Pounds a Year of one Person, and another of such a Rent as with the other amounts to 10*l.* a Year, this gains a Settlement under the Statute which requires the Renting a Tenement of the yearly Rent of ten Pounds. *Trinity*, 3 *Geo.* 1. the Parish of *South-Sidenham* against *Lamerton*. The Words of the Statute are entirely satisfied, for here is a Hiring for a Year and a Service for a Year. This Statute is not taken strictly. Parish of *Soleberry* against *Ivinghoe*, *Easter* 4 *Geo.* 1. *The Reason why a Year's Service gives a Settlement is in respect of the Benefit the Parish is supposed to receive from the Parties Service.* By the Statute of *W.* 3. a Hiring for a Year, and a Service for forty Days only gained a Settlement. And the Statute 8 *W.* 3. only requires a Year's Service without confining it to be in Pursuance of the same Hiring. Here the Hiring was from *Michaelmas* to *Christmas*, and the second Hiring for a Year, under which the Party has served three Quarters of a Year, and in the whole served a Year.

Lord Chief Justice *Raymond:* The Case cited by Mr. *Reeve* is express to this Purpose, and therefore we cannot break into it; but if this had been *Res Integra*, I should have thought it ill. Here the Service is made previous to the Hiring for a Year.

Mr. Justice *Page:* Suppose a Man is hired from Week to Week as a Servant, and serves eleven Months, and then he is hired for one Year, and serves two Months, that will be the same with the present Case.

Mr. Justice *Reynolds:* This Point has been settled. The Statute 8 and 9 *W.* 3. is only an Explanatory Law, to shew what is meant by the Word *Hiring* in the Act of 4 *W.* 3. I think this answers the general Intention of the Law, and is comprehended within the words of it. Mr. Justice *Probyn* of the same Opinion.

The Court quashed the Order of Removal, and held this a good Settlement, though the Service was not pursuant to the Hiring. The greater Part of the Judges thought this Case to be against the Statutes, but that they were more strongly bound by the Precedent. But Note in *Salk.* 535. two several Hirings for Half a Year, and a Service for a whole Year, was held not sufficient to gain a Settlement. *The Case of West-Hallam had an Influence upon the Lord Chief Justice* Raymond, *and Mr. Justice* Page, *who upon this Case were inclined that this should be a Service pursuant to the Hiring, but were unwilling to set aside a Resolution solemnly adjudged, though not according to their Opinion.*

Mr. Justice *Reynolds* said, The Intent of the Act was to prevent Frauds, which were frequent before the making of it; for several Persons could maintain a Servant for forty Days, who could not for a Year, and would not hire Servants for such a Time to charge the Parish; and this was the ground of the former Resolutions.

Mr. Justice *Probyn:* The former Resolutions, if doubtful, must be construed according to the Reason of the Common Law, that a Man should be settled where he inhabited, and was not thence removed; which being the Common Law must not be overturned without the Express Words of an Act of Parliament.

Michaelmas, Thirteenth of *George*.

The Parish of Gregory-Stoke *against* Pitmister.

MOVED to quash an Order of two Justices, and an Order of Sessions confirming the first Order. *A.* was born in *P.* in the Year 1691 and thirteen Years ago she being 14 Years old, she served her Grandmother in *G.* for the Space of four Years, on an Allowance of Meat, Drink, Washing and Lodging. *G.* removed her to *P.* and upon that *P.* appeals. The Justices held this to be no Settlement at *G.* It was urged for the Settlement, That where no Time is set out, the Statute of Labourers 45 *Eliz.* will imply a Year and no less. The Court denied here was any Contract between the Grandmother and the Girl, for she might have left her Grandmother at any time, and only lived with her as a Relation, not as a Servant, and it does not amount to a Contract. Then it was urged, that there was no Adjudication of a Settlement in the Order of Sessions. It appeared by the Order of Justices she was settled at *P.* therefore the Court said, If we set aside the Order of Sessions, we must refer you to the original Order, and there it is adjudged she is settled at *P.* They would not quash the Order.

Mr. Justice *Fortescue* cited the Case of Sir *Lionel Pilkington's* Servant who was put to a Barber to learn the Art of Shaving, and after a Year's Stay there, held it was not a Settlement under the Statute *W.* 3.

Michaelmas, First of *George* the Second.

The King *against* The Inhabitants of Sutton upon Trent.

THE Order was specially stated for the Judgment of the Court. *J. S.* being an unmarried Person, and having no Child or Children served *A. B.* from *March* 1725, to *March* 1726, and in *September* intermediate he married, and served out his Year; the Question was, If this was a good Service to intitle him to a Settlement? The Court held it was good, and to be unmarried at the Time of the Hiring is the only thing necessary, in order to get a Settlement by the Service, and that the Service is not dissolved by the Marriage.

Another Exception was taken; it is said in the Order *he was* last legally settled; but this was not allowed, and the Order of Removal was quashed.

Michaelmas, Thirteenth of *George*.

The King *against* The Inhabitants of Sealon Tongal and Worpleston.

MOVED to quash an Order of Sessions which set forth the Matter specially, and adjudged a Man, who was a Tenant, and paid four Pence to the Poor on the Account of his Tenancy, to have gained a Settlement when the Pound Rate was charged entire upon the Landlord. Upon the Rule to shew Cause it was said the Premisses were demised, and a Deduction taken for that Part, according to the Proportion of the Rate imposed upon the whole. The Overseers cannot charge; the Charge is the Effect of the Rate, and the whole is charged *as being* in the Hands of the Landlord; he shall not get a Settlement though he pays a proportionable Rate for a Part rented of the Owner; and the Rule made absolute to quash the Order of Settlement.

Trinity, Thirteenth of *George*.

Parish of Haversham *against* Shitesbury.

MOVED to quash an Order of Sessions confirming an Order of two Justices.

Exception to the Order of Justices, that it does not thereby appear of what Age the Children were.

Exception to the Order of Sessions which stated the Matter specially, that 50 years ago *J. S.* was born at *B.* and two Years since was removed with his Wife and Children to the Place of his Birth, having lived ——Years at another Place, then his Settlement at that Place

happening before the Statute of *James* II. he was not obliged to give *Notice*, but a bare Residence of 40 Days in a Parish was sufficient. And upon the Rule to shew Cause the Court held that a Settlement was gained by a Residence of 40 Days without Notice, after the Statute of *Car.* II. and before the making that of *James* II.

Hilary, First of *George* the Second.

Parish of Bishops-Hatfield *against* St. Peter's in St. Albans.

TWO Justices made an Order to remove one *Henry Langley*, his Wife and Daughter from *H.* to St. *Peter's*, who appealed to the Sessions, and the Sessions quashed the Order of Justices. The Order of Sessions stated the Case specially thus, That *H. L.* was hired by Mr. *Arnold* an Inhabitant of St. *Anne's Westminster* at the House of *A. B.* in St. *Peter's*, to serve him for a Year as his Huntsman, who lived and dieted with *A. B.* for nine Months of the Time, and there looked after Mr. *Arnold's* Hounds; that he served out the Year, and *Arnold* paid him his Wages, but that *Arnold* himself had no Settlement in the Parish of St. *Peter*. The Justices at the Sessions were of Opinion that the Servant could not gain a Settlement where the Master had none, and therefore discharged the first Order. Now the Court quashed the Order of Sessions; for if a Person is hired for a Year and continues for 40 Days thereof in a Parish, he gains a Settlement there without any Regard to the Master. Mr. *Lacy* cited the Case of St. *Peter's Oxon* against *Chipping Wycomb* in *Bucks*, 13 *Geo.* 1. adjudged that where a Stage-Coachman hired a Servant at *Oxford* to serve him for a Year, and sent him directly to *W.* to attend his Stage-Horses, and he did the whole Service at *W.* he gained a Settlement there by his Service; for it is absurd to say one shall not gain a Settlement, when at the same Time he cannot be removed, for the Justices of *Oxon* could not have removed him, though the Hiring was there; whereas here both the Hiring and Service was at *St. Albans*.

Hilary, Second of *George* the Second.

The King *against* The Inhabitants of Hemioak in Devonshire.

TWO Justices made an Order to remove *W.* and his Wife from *H.* to *Cletradon;* an Appeal was made from this Order to the Sessions, who make a special Adjudication that *J. W.* in the Year 1720, covenanted with one *H. J.* then of *Hemioak* to serve him in Husbandry, for one Year, and in Pursuance of the said Contract lived with the said *J.* in *H.* aforesaid, for three Quarters of a Year, and then went with the said *J.* his Master into the Parish of *C.* and there lived with and served his said Master the rest of the Year, and received his Year's Wages. The Sessions were of Opinion that the Hiring and Service ought to be in one and the same Parish for the whole Year, and therefore adjudged that the said *W.* did not gain a Settlement in the said Parish of *C.* by the Service aforesaid, and upon that discharged the Order of the two Justices.

Mr. *Hussey* moved to quash this Order of Sessions, and he cited the Case of St *Peter's Oxon* against the Parish of *Fawley*, *Trinity* 8 *George*, where one *Mary Norris* was hired at *Christ-Church*, an extraparochial Place, for a Year; her Mistress and she lived with a Canon of the College a Part of *the Year*, and then went and made a Visit in the Parish of *Fawley*, where they stayed three Months, and then returned to *Christ-Church*, where the Year's Service expired; and being sent from St. *Peter's* to *Fawley* by two Justices, Sessions discharged that Order, but the Order did not state how long they were at *Christ-Church* before the Service ended, whether 40 Days, or not, and the Resolution of this Court then was, that she gained a Settlement at *Fawley*, because for aught appears by the special Case stated, that was the last Place of her Residence for 40 Days, under the Service.

By the Court: There have been several Determinations of the same Nature. The Order of Sessions must be quashed.

Hilary, Second of *George* the Second.

The King *against* The Inhabitants of Bengoe in Hertfordshire.

TWO Justices made an Order to remove a *Man* from the Parish of *All Saints Hertford*, to the Parish of *Bengoe;* and upon an Appeal from this Order the Sessions affirmed the Order of two Justices, and state the Matter specially in the Order, that *C.* the Father of this *Man*, purchased an Acre of Freehold Land in the Parish of *B.* and paid twenty-five Pounds for the Purchase, and afterwards erected thereon a Messuage for his own Habitation, in which he laid out a considerable Sum of Money, and that afterwards he sold the House and Acre of Land for 150*l.* but was never rated to the Taxes for nine Months he lived there. These Orders being removed by *Certiorari*, Mr. *Coningesby* moved to quash them, because the principal Sum paid for the Purchase being but twenty-five Pounds, it was not a Settlement within the Words of the Statute 9 *Geo.* 1. *c.* 7. §. 5. which enacts that "No Person or Persons shall be deemed to acquire or gain any Settlement in any Parish or Place, for or by Virtue of any Estate or *Interest* in any such Parish or Place whereof the Consideration of such Purchase doth not amount to the Sum of thirty Pounds *bona fide paid* for any longer or further Time, than such Person or Persons shall inhabit in such Estate, and shall be then liable to be removed to such Parish or Place where such Person or Persons were last legally settled before the said Purchase or Inhabitancy therein." Mr. *Reeve* on the other Side said, That by laying out of the Money on the Improvements he must be taken to be a Purchasor of a sufficient *Interest* to gain a Settlement in that Parish within that Intent of the Statute, for the Reason of the thing bespeaks it, because by his Expence in building the House he is to be considered as a Purchasor of the Improvements. But the Court said then that the Words of the Statute require that the Consideration *bona fide* paid, must be thirty Pounds, and as for the Money laid out, for any thing that appears, he might borrow it all. But this is Presuming a thing not found, or stated in the Order, and if it were really so, it would amount to a *Fraud* in the Party, which the Court cannot intend, except it had appeared before them on the Order. *Cro. Car.* 234. *Mathews* against *Whettom.*

It was further argued, that the Intention of the Statute of the 9 *Geo.* 1. does not seem to exclude the gaining a Settlement under the 13 and 14 *Car.* 2. *c.* 12, in the Parish where the Party was last legally settled, either as a Native, Householder, etc. for the Space of 40 Days; and tho' Acts of Parliament are in some Instances restrictive of the Qualifications made necessary to gain a Settlement; yet there happen particular Cases which do not fall under those Restrictions, but the Party shall have the Benefit of such Statutes. The Statute of 1 *Ja.* 2. *c.* 17. requires Notice in Writing to be given to the Church-wardens and Overseers of their House of Abode, etc. before they shall gain a Settlement; and yet it is not necessary for hired Servants coming into a Parish to give such Notice. By the Statute 3 and 4 *W.* and *M. c.* 11. It is enacted if any unmarried Person, not having Child or Children, be lawfully hired for a Year, such Service shall be deemed a good Settlement, etc. Now though this Act intends to exclude such Persons the Benefit of a Settlement who have a *Child* or *Children*, yet if he happen to have a *Child* or *Children*, and *they* be not chargeable to that Parish, the Statute does not take away the Settlement of the Father in the Parish where he served. The Statute 8 and 9 *W.* 3. *c.* 30. says a Person *hired for one Year*, shall be deemed to have a good Settlement in that Parish, if he continues in the same Service during one whole Year; yet if a man has been hired for *two Half Years* and serves out those two Half Years, he procures a Settlement in that Parish. Here the Settlement is gained not by the Purchase, but where a Man comes into a Parish he gets a Settlement by his own Industry. The Case of a certificated Person is parallel to this Case; Where a Copyhold is surrendered or descends, and the Wife is admitted, the Husband gains a Settlement by this Interest of his Wife, notwithstanding the Certificate. *Easter* 5 *Geo.* 1. the Case of *Burclear* and *Eastwoodhay.* The King against the Inhabitants of *Wyley*, *Michaelmas* 11th of King *George.*

Mr. *Fazakerly* on the other Side said, That the Attempt to settle the Man under this Purchase tends to overturn the Words of the Statute; the Words of the Statute are negative, and this Case falls not only within the Words, but within the Meaning of it. This

building of the Messuage does not make any Alteration, it rather throws Persons under those Circumstances which the Words of the Statute meant to redress and provide against; for by this Means poor People purchase small Quantities of Land and undo themselves in Building, and this Man's parting with and selling the House so soon after as he had laid out his Money, shews plainly what Necessity he was under. But the Order does not state that the Money was ever paid, or that the House, etc. was of that Value; and after he parts with the Messuage, and ceases to dwell there, the Act gives a Power to remove. As to the Case of the Copyhold, the Husband by that got a Settlement at Common Law, and it would not be practicable to remove a Man from his Estate of that Nature; but that Law is superseded by the Statute, and the Purchasor is to be settled there no longer (where he does not pay thirty Pounds for the Purchase) than while he is an Inhabitant. Suppose this Building was an Eye-sore to a Gentleman's Seat or Estate, that Gentleman would give one hundred and fifty Pounds for the thing, though really not worth ten Pounds, only that he might have it in his Power to make what Use of it he thought fit for his own Conveniency. The Court disallowed his Objection, that it was not worth so much as stated to be sold for in the Order.

Lord Chief Justice *Raymond:* Before the making of this Statute he was not removeable, but the Settlement continued if he had inhabited there 40 Days, and the Money laid out in Building does not bring him within the Benefit of the Statute. I am doubtful how far this Statute is to be looked upon as an explanatory Law, and we can intend no Fraud, unless the Justices set it forth in their Order.

Mr. Justice *Page* seemed to think, that though the Purchase is under the Value of the Sum prescribed by the Statute, yet as it was coupled with another Act, it was to be considered whether it was not sufficient to get a Man a Settlement.

Mr. Justice *Reynolds:* Explanatory Statutes are not to be extended; Estates by Descent of twenty Shillings a Year gain a Settlement, and since the Act was made, a Residence on an Estate of a Value under the Price limited by the Statute, cannot procure a Settlement, especially after a Man is removed.

Mr. Justice *Probyn:* This Case is within the Act, when he has built a House and laid out Money in the Erection of it, in that View he is a Purchasor for above 30*l.*

Easter, Second of *George* the Second.

The King *against* The Inhabitants of Abbots-Langley in Hertfordshire.

TWO Justices made an Order to remove *J. Crosby* and his Wife from the Parish of *Aldenham* to *Abbots-Langley*. The Church-wardens and overseers of the Poor of *A. L.* appeal from this Order to the General Quarter-Sessions of the Peace held at *St. Albans* for that Liberty, and the Order of Sessions set forth that the Facts appeared to be, that the said *J. C.* did obtain a legal Settlement in the Parish of *Abbots-Langley* aforesaid; that afterwards (*to wit*) about forty-two Years ago, he with his then Wife took an House in the Parish of *Aldenham* aforesaid, with the Knowledge of the Church-wardens and Overseers of the same Parish (as he believes) and there kept a publick and open Shop, and lived there unmolested till the Order of Removal above-mentioned, and that his coming into the said Parish of *Aldenham* was subsequent to the Statute 1 *James* II. that on the first Day of *October*, which was in the Year of our Lord 1688, a Licence was granted to him by the Justices of the Peace of the same County, for buying and selling of Grain and Corn, that he kept a publick Alehouse in the said Parish, for the Space of thirty-five or thirty-six Years and upwards, which was publickly known to the Parish-Officers, that during his living there the Overseers of the Poor of the said Parish, and other the Parish-Officers, *distributed* to him amongst others of the Parishioners, certain yearly Gifts or Charities, reputed to be annually given to the Parishioners and Inhabitants of the said Parish only; that during his living there he had five Children born and publickly christened by the Minister of the said Parish of *Aldenham*, and that some time after his coming into the said Parish he was *placed* by the Church-wardens in a Seat in the said Parish-Church as one of the Parishioners of the said Parish; that in the Reign of King *James* II. he did Watch and Ward in the said Parish as an In-

habitant thereof, with the Rest of the Parishioners there; and that at several Courts Leet held in the said Parish, he served as a Jury-Man in such Courts Leet held in the said Parish; that every Year during his Residence in the said Parish of *Aldenham*, he either did his Duty in working to mend the Highways in the said Parish, or paid Money to the Surveyors of the said Parish to be excused therefrom. This Court, upon due Examination of the whole, is of Opinion the said Order for Removal ought to be confirmed, and doth confirm the same accordingly. These Orders being removed by *Certiorari*, Mr. *Filmer* moved they might be quashed. The Question was if this was not a sufficient Notice to entitle a Man to a Settlement within the Meaning of the Statute 1 *Jam.* II. *c.* 17. having happened *after* the making of that Statute, which requires that the forty Days intended by the 13 and 14 *Car.* 2. §. to gain a Settlement, shall be accounted from the Time of the Notice in Writing of their or his House of Abode, and the Number of their or his Family; and *before* the Statute of 3 and 4 *W.* and *M. c.* 11. which requires the forty Days Continuance of a Person, shall be accounted from the Publication of a Notice in Writing, etc. It was insisted, that as the Statute of *James* II. was made to prevent clandestine Settlements, these several Facts stated in the Order of Sessions amounted to a Notice in Writing. *Carth.* 28. *Show.* 12. *Salk.* 476, 472, 534.

On the other Side, to confirm the Order, If all these Facts had happened since the 3 and 4 *W. M.* they would not make a Settlement. If a Man is hired as a Servant, etc. no Notice need be given, for though the Church-wardens had no Notice, yet being not removable (*Salk.* 473) they could not apply to a Justice of Peace to disturb him. The 1 *James* II. requires Notice in Writing, etc. and the 3 and 4 *W.* and *M.* does not repeal the Act of 1 *James* II. but requires that Notice in Writing be read in the Church, and the Church-wardens and Overseers shall register such Notice. As the Act has described what Persons shall gain a Settlement without a Notice in Writing, all others that come not within or under that Description are excluded, and must give Notice. *Salk.* 534 The Order states that forty-two Years ago he came into the Parish of *Aldenham*, with the Knowledge of the Church-wardens, etc. (as he believed) but does not set forth that he gave Notice; so it shall be *intended* no Notice at all was given. A Licence to him by the Justices to sell Corn is not such a Notice as shall affect the Parish that was no Party to it. The keeping an Alehouse for thirty-five or thirty-six Years is not ascertained in the Order whether he first kept it before or after the Statute 3 and 4 *W.* and *M.* It is not said when the Charity was distributed, it might be in the last Year of his Stay there. The Christning of his Children is not material to the getting a Settlement; it is not set out when the Church-wardens placed him in the Seat in the Church. The doing Watch and Ward in the Parish in the Reign of *James* II. is not any Evidence of a Notice, for that must be appointed by the Constable, and the Church-wardens have nothing to do with it, to whom the Notice is to be given; neither is the Serving on Juries in the Courts Leet any stronger Evidence of a Settlement, for he serves on those Juries by Virtue of his Resiancy; and all these Facts cannot be said to be a constructive Notice, and the working at the Highways is regulated by the proper Officers.

It was said, in Answer to this, That what is stated in the Order (as he believes) the Justices have not determined it one way or other, and as the Order has not specified that Notice was given, the Court will *presume* that *Notice* was given after so great a Length of Time, in which he has lived in the Parish of *Aldenham*, *Salk.* 472. and the Order alledges positively, that during all the Time of his Stay in the Parish, he either worked at the Highways, or paid his Money to the Overseers, but is some Evidence of Settlement.

Mr. Justice *Page:* All these Facts put together, if supposed to be done before the Statute *W.* and *M.* will not amount to a Settlement, nor are they tantamount to a constructive Notice, for the Statute *Jam.* II. expressly requires Notice to be given in Writing. His taking a House in the Parish of *Aldenham*, with the Knowledge of the Church-wardens, etc. (as he believes) is not sufficient; the Order should have set it out positively that he came there with their Knowledge. The granting a Licence by the Justices to sell Corn does not much mend the Matter; it might be granted to a Vagabond, and the Justices often refuse to grant such Licences, unless they have a Certificate from the Parish where the Party lives and is settled. I am of Opinion the Order must be confirmed.

Mr. Justice *Reynolds:* It is a difficult Matter to account for the Reasons of the Resolu-

tions of former Cases. The Statute of *James* II. is express and explanatory of the 13 and 14 *Car.* II. I am doubtful as the Statute 3 and 4 *W. M.* being an Explanation of the 1 *James* II. has not cut up by the Roots all the Resolutions of Cases which have happened under *that* Statute, and the Constructions of Cases under it. The performing Watch and Ward does not settle a Man, but Paying to a Rate to the Repairs of the Highways would have done it; the Order must be confirmed. The Reason of former Resolutions has been founded on the Word *such* in the Preamble of the Clause, which extends to Persons coming in clandestinely. The Statute of *W.* and *M.* takes off the Latitude Judges might make in their Constructions of the Statute of *James* II.

Mr. Justice *Probyn:* I do not think the Statute of *W.* and *M.* alters the Statute of *James* II. as to Persons coming into a Parish before the making of the Act. The Facts stated in the Order are publick and adequate to a Notice in Writing; they are all stated in a Series of Time, and must be taken successively one after another. That he took an House with the Knowledge of the Church-wardens (as he believes) is an Evidence to the Justices he was settled there, and we must judge of the Facts by the Evidence which was laid before them. The Seating him in the Church is a strong Evidence of the Right of Settlement, for he was seated there as a Parishioner, and that is an express Acknowledgement he was esteemed a Parishioner by the Church-wardens. Then the Fact of doing Watch and Ward is stated in the Order to be performed in the Reign of *James* II. and all the other Facts must be supposed to have happened previous to that, for in the Order most of the Facts are stated previous to that. I am for quashing the Order.

Lord Chief Justice *Raymond* said he was a Parishioner and thought himself bound not to give any Opinion, for he would not give his Opinion against his Parish, and he could not give it for them, but was earnest that the Resolutions of the Judges upon Cases determined since the Statute of 1 *Jam.* II. were strained, and that Notice in Writing is Permanent, and nothing can supply it.

Hilary, Third of *George* the Second.

The King *against* The Inhabitants of Abbotts Langley.

This Term the three Judges gave Judgment in this Case seriatim.

MR. Justice *Page:* Without a Notice agreeable to the Statute of *W.* 3. the forty Days Continuance of a Person in any Parish shall not commence till after such Notice is read in the Church. It will be difficult to maintain that the several Facts stated in the Order of Sessions do amount to a Notice in Writing. The Order must be confirmed.

Mr. Justice *Reynolds:* I have often wondered how the Resolutions of any Cases have supplyed irregular Settlements by the Assistance of constructive Notice. The Words of the Statute of *Jam.* II. say the forty Days shall be accounted from Notice given; the Statute *W.* 3. carries that further, and orders the forty Days shall be accounted from reading the Notice in the Parish Church. I am of the same Opinion.

Mr. Justice *Probyn:* If you construe these Facts stated in the Order of Sessions in any other manner than as not amounting to a Notice in Writing, it would be going against the positive Words of the Statute. There is no Collection of Facts laid together that shall be tantamount to a Notice in Writing, and such publick Notice was thought requisite in order to prevent clandestine Settlements. And the Order of Removal from *Aldenham* to *Abbotts Langley* was confirmed.

Hilary, Third of *George* the Second.

The King *against* Church-wardens and Overseers of St. Ives.

MOVED for a *Mandamus* to be sent to the Defendants to sign a Certificate, acknowledging a poor Person being settled in their Parish on an Affidavit that he had served an Apprenticeship there, and that he was capable of getting a good Livelihood elsewhere. But the Court rejected the Motion as a very strange Attempt.

Easter, Second of *George* the Second.

The King *against* St. Matthew's Parish in Ipswich.

TWO Justices made an Order to remove *Edmund Williams*, *Anne* his Wife, and *Edmund*, *Solomon* and *Amy*, Children of the said *Edmund* the Father, from the Parish of St. *Michael* in *Norwich*, to the said Parish of St. *Matthew* in *Ipswich*. Upon an Appeal from this Order, the Justices at Sessions stated the Matter specially, That *Edmund W.* the Elder, Father of *Edmund W.* the Father of the said Children, was settled at *Shipton-Mallet* in *Somersetshire*, and afterwards removed to *Bruton* in the said County, and had a *Writing* given him from *Shipton-Mallet*, acknowledging his legal Settlement to be there; by Virtue of which he continued at *Bruton* for 20 Years, where *Edmund* the Son was born; and that he continued *there* with his Father till he was nineteen Years of Age, and was bred up to his Father's Business of a Woolcomber; then *Edmund* the Son left his Father and came to *Norwich*, and there he married two Wives, by the first he had *Edmund* the Grandson, and ten Years after his Wife died; then he married *Amy* his now Wife, by whom he had *Solomon* and *Amy* two other Children, since whose Birth, about two Years ago, *Edmund Williams* the Grandfather gained a *new Settlement* at St. *Matthew's Ipswich;* but *Edmund* the Son hath never lived with his Father at *Ipswich*, or any where else, since he lived with him at *Bruton*.

The Sessions adjudge that the Persons removed had not gained a Settlement in St. *Matthew's Ipwich*, and therefore discharge the Order of two Justices. These Orders being removed by *Certiorari*, is was moved to quash the Order of Sessions. The Question was, Whether the Persons removed, *viz. W.* his Wife and three Children, should follow the Settlement of the Grandfather at *Ipswich*, or whether they should not be look'd upon as separated from the Grandfather's Family, especially after so long an Interval of Time? On the Rule to shew Cause why the Order of Sessions should not be quashed, it was urged the Order of Sessions was good, and the Case of *Eastwoody* against *Westwoody*, *Trinity* 7. *Geo.* 1. was cited, where the Father was settled at *Hampstead-Marshall*, and there he had a Son, and lived in that Parish till the Son was eight Years old; after which he removed with his Son to *Westwoody;* there he purchased an Estate and staid twelve Years; subsequent to that the Father went and got a Settlement at *Eastwoody;* but the Son did not remove thither with him; and it was held by this Court that the Son was not settled at *Eastwoody;* though it was insisted the Son gains a Settlement wherever the Father goes, till he has gained a Settlement by some Act of his own. Parish of *Cumner* and *Milton*, *Salk.* 528. Parish of *Dumbleton* against *Beckford*, *Salk.* 470. It does not appear but that he might have got a Settlement since that Time.

To which it was answered, That this Case does not fall under any of the Statutes, and therefore it must be considered under the Constructions which were made before the making of the Statutes about Settlements. Where there was a legitimate Child born, the Father's Settlement descended to him; and an infirm Child by the Statute is to be maintained by the Father or Grandfather; and such sick or infirm Person was to be sent to the Place where the Person lived who was to maintain him. The Case of St. *Giles's Reading* against *Eversly Blackwater*, is directly contrary to the Case of *Eastwoody* and *Westwoody*.

By the Court: There the Children were two Years old, and, though they are not with the Father, are Part of his Family.

Mr. Justice *Reynolds:* The Question now is, Whether a Man who has ceased to be Part of the Father's Family, can gain a Settlement by the subsequent Settlement of the Father; and I do not see how the Father can gain a Settlement for the Son nineteen Years after the Son has left him.

Mr. *Fazakerly:* In the case of a legitimate Child, he shall not get a Settlement where he is born, but where his Father's Settlement was; and the Settlement of the Son, as long as he continues under such an Age, as by any act of his own he cannot get him a Settlement, shall follow that of his Father, let the Father change his Settlement as long and as often as he will, for it is relative to the Father's Settlement; and this will hold in the Case where the

Father is dead, and therefore the Son gains a Settlement, not as Part of the Family, but by the Relation of Settlements between the Father and Son, which is derived to the Son.

Mr. Justice *Reynolds:* This is not a Charge upon the Grandfather, but upon the Parish.

Lord Chief Justice *Raymond:* I think it is odd that an old Man of sixty, who has left his Father for forty Years, shall follow the Settlement of his Father as often as he removes. In the Case of young Children you cannot sever the Children from the Parents because of Nurture.

And *by the whole Court:* The Reason why we inquire *into the Ages* of Children is, because if they are grown up and above *seven* Years old, they may gain a Settlement by their own Act; but it is almost a Contradiction in Terms to say, that a Man who has left his Father forty Years, shall follow the Settlement of his Father; and Mr. *Fazakerly's* Cases do not come up to this Point.

Another Exception was taken to the Caption of the Order, which is drawn thus, *Be it remembered*, That at the General Quarter-Sessions of the Peace held (on such a Day) by Adjournment. But it should have been set forth when the Sessions was first held at a proper Day, and then shewn the Continuance of the Sessions down to the Time of making the Order to have been by Adjournment, and that would have been right; but the original Sessions is set forth to have been held at a Time not allowed by the Statute, and in an improper Manner, The King against *Walker*, The King against the Inhabitants of *Mansfield*, and now it is too late to *amend* the Caption, for a Term or two are elasped since the Orders came in.

N. B. This Order was made at a Sessions held in and for the City of *Norwich;* and they may hold a Sessions at a different Time from the County. This last Exception the Court held fatal, and afterwards quashed the Order.

Trinity, Second and Third of *George* the Second.

The King *against* The Parish of Hollyburne in Southampton.

TWO Justices of Peace made an Order to remove *A. B.* of the Parish of *Hollyburne*, his Wife and Children; and set forth that they are come to dwell in the Parish of *Elsted* in the County of *Surry*, not having got a Settlement there; and on Examination they adjudge their Settlement to be at *Hollyburne*, and require the Church-wardens of *Elsted* to remove him, his Wife and Children to *H.* The Church-wardens of *Hollyburne* appeal from this Order to the Sessions in *Surry*, and the Sessions state the Matter specially. Now upon Examination of several Witnesses upon Oath, it appears to this Court that the said *A. B.* rented a Tenement consisting of a Farm-house and Lands, of the Value of twelve Pounds ten Shillings a Year, and had Ability and competent Stock for a Farm of that Value, and had paid his Rent for the same for two Years, which Farm-house and Lands lay contiguous, and had been usually letten together and occupied by the same Person; but the Farm-house in which the said *A. B.* lived, and so many Acres of the said Land as amount to the Value of nine Pounds ten Shillings a Year, lay in the Parish of *Elsted;* and so many Acres of the said Land as amount to the Value of three Pounds a Year, lay in the Parish of *Seal*, in the same County; and on hearing Counsel they confirm the Order, and dismiss the Appeal.

Mr. *Ballard* moved to quash the Order of Sessions and the Order of two Justices, because they had no Power to remove this Man, his Wife and Children, he having rented a Farm of above ten Pounds a Year, and the Statute says expressly, That no Persons, who shall come into any Parish by any such Certificate, shall be adjudged by any Act whatsoever to have procured a legal Settlement in such Parish, unless such Person shall *bona fide* take a Lease of a Tenement of ten Pounds a Year *in such Parish*. The Case of *South-Sidenham* against *Lamerton* in *Easter* Term 1717, is in Point. Lord Chief Justice *Raymond* seemed to think he should rent a Tenement of ten Pounds a Year, all in the same Parish, before he gets a Settlement there; for the Words of the Statute say positively the renting the Tenement of ten Pounds a Year shall be in *such Parish*. Upon the Rule to shew Cause, it was said to be an hard Case; and that nothing more than a Rule to shew Cause could be found in the Case of St. *John's Hertford* against *Amptwell*, which was the Case relied on. Mr. *Marsh* who

was Counsel in that Case, said the Court gave Judgment that Inhabitancy made a Settlement, and that Case was adjudged on the Authority of *South-Sidenham* against *Lamerton*. Here the Orders were quashed.

Hilary, Third of *George* the Second.

The King *against* The Inhabitants of Sawbridgeworth.

TWO Justices made an Order to remove *A. B. his* Wife and four Children, from the Parish of *Aldborough* to the Parish of *Sawbridgeworth*; the Parish of *Sawbridgeworth* appeals from this Order, and the Sessions stated the Matter specially, "That *A. B.* lived in the Parish of *S.* and that his Father about twelve years ago, before the making of the Statute 9 *G.* 1. *c.* 7. being seised in *Fee-simple* of a Copyhold Estate of twenty-five Shillings *per Annum* Value, in the Parish of *Aldborough*, did about a Year and an Half ago, surrender the said Copyhold to his Son *A. B.* who thereupon went to live at *Aldborough*, and after a Year and Half's Continuance at *A.* the said *A. B.* sold the said Copyhold for fourteen Pounds ten Shillings, and after the Sale the Justices made this Order to remove him to *S.* where he had lived before the Surrender; which Order the Sessions confirmed."

It was moved to quash these Orders, for *A. B.* having got a Settlement at *Aldborough* by the Surrender of the Copyhold, was not removable to *Sawbridgeworth*, where he had lived before; and this being a Surrender made on the Consideration of natural Affection by the Father to the Son, there could be no room to intend any Fraud in the Business; but that it was a fair and open Transaction.

Court: This cannot be called a Purchase, here is no Money paid, and there is room to intend a Contrivance between them upon this voluntary Surrender of the Copyhold; but if it had come to the Son by Descent from the Father in a natural way, the Presumption of Fraud vanishes; and this Case plainly comes under the Intention of the Statute; and the Provision it has made against fraudulent Settlements, by fixing the Means of obtaining a Settlement by Purchase to a Sum certain, which is not pretended here to have been paid; though if a valuable Consideration, as directed by the Statute, had been paid by the Son for this Copyhold, it might have been considerable how far then that Circumstance might have influenced this Case; this is no Purchase in Law.

An Exception was taken to the original Order of two Justices, because they have not adjudged or said whose Children the four were; it being only to remove *A. B. his* Wife and four Children.

The Court said the Word *his* goes to the whole Sentence.

Mr. Justice *Page:* If a Man would give you his Cart and Horses, would you take the Cart and leave the Horses? The Court would not order a Rule to shew Cause, but confirmed the Orders.

Easter, Third of *George* the Second.

Parish of Minchin-Hampton *against* the Parish of Bisley.

TWO Justices of Peace made an Order to remove a poor Person from the Parish of *B.* to *M.* the Parish of *M.* appeals to the Sessions from this Order, who confirmed it; and the Order of Sessions stated the Fact specially, That *Jeremiah Mayo* was born in the Parish of *B.* and afterwards rented an Estate of fourteen Pounds *per Annum* in the Parish of *M.* for one Year, and then returned to *B.* and rented in the said Parish of *B.* Lands of the yearly Value of eight Pounds from his Father, and an House of the yearly Rent of one Pound ten Shillings from his Uncle; and the same Year *took the Pasture Eatage of a Piece of Ground* in the said Parish, from *Michaelmas* to *Candlemas* following, and paid twelve Shillings for the same; the said Piece of Ground being of the yearly Value of six Pounds *per Annum*. Mr. *Stephens* moved to quash the Orders, because it appeared by the Facts stated in the Order of Sessions, that the man was not removable during those three Months. It appears upon the special State of the Case, that a Settlement was gained in *Bisley*, subsequent to that

he had gotten in *M.* for *Mayo* lived afterwards in *Bisley*, and rented ten Pounds *per Annum* within the Intention of the Statute of the 13 and 14 *Car.* 2. *c.* 12. for the Ability of the Man is principally to be considered, and not the Nature of the *Taking*, since the Statute does not prescribe or limit any particular Time for the *Taking*. This man rented nine Pounds ten Shillings a Year, which not being sufficient to maintain his Stock, he takes the Pasture of a piece of Land at twelve Shillings, which makes his Rent above ten Pounds within the same Year; and although it be of several Possessions will make a good Settlement; and so was the case of *North-Nibly* against *Wotton-Underidge*, *Mich.* 1. *Geo.* 1. where a Man took an Inn at *Ladyday* 1714, to hold for one Year at six Pounds five Shillings Rent, and towards the End of *May* following took a Meadow Ground for five Pounds till the *Ladyday* following, which was held a good Settlement. For the Court said, When other Lands are laid to it, it becomes an intire Tenement; besides, the Value of the Thing rented is principally respected, and not the Tenure. A Tenement of ten Pounds *per Annum*, hired but for one Month, would not make a Settlement; because the Farmer is not to answer ten Pounds Rent.

But in this Case the Court held, that *taking the Pasture of a Piece of Land* was not more than taking the Herbage, or than taking the Common, which could *not be esteemed Part of a Tenement* within the Meaning of the Statute; but seemed to think that if the Words had been that he had *taken a Pasture Ground* for three Months, that would have made a good Settlement; but over-ruled the Objection.

Michaelmas, Fourth of *George* the Second.

Parish of Hanmore *against* The Parish of Ellesmere.

THE Sessions upon an Appeal make an Order, and state the Matter specially, That a poor Person was hired and served a Year in the Parish of *Hanmore*, since which Time, *viz.* in 1718, he was hired by one *Roseley* of *Ellesmere* in *Salop*, to serve from *Ladyday* to *Christmas* following, which he did, and was then hired for a Year and served to the End of *May*, in all above a Year. The Sessions adjudged this Hiring and Service in the Parish of *Ellesmere* by two distinct Hirings, did not gain the Man a Settlement there.

It was now moved to quash this Order of Sessions, because the 3 and 4 *W.* and *M. c.* 11. makes a Hiring necessary to a Settlement; and the Statute of the 8 and 9 *W.* 3. *c.* 30. makes a Service for a Year necessary to a Settlement; but it is not made necessary that a Man should serve one intire Year in Consequence of his being hired for a Year; for if a Man serves a Year in a Place under two different Hirings, and one of the Hirings be for a Year, though he does not serve out the Year, yet having in the whole served a Year, the Intent of the Statute is thereby satisfied; so are the Resolutions in the Cases, Parish of *Overton* against the Parish of *Stephenton*, *Hilary* 10 *W.* 3. the King against the Inhabitants of *Brightwell*, *Easter*, 1 *Geo.* 1. and upon the Rule to shew Cause, the Court was clearly of that Opinion, and quashed the Order of Sessions; the Case of the King against the Inhabitants of *Ayno* in *Michaelmas* 1 King *George* II. is to the same Purpose.

Hilary, Fourth of *George* the Second.

The Parish of Cuerden *against* Laland.

TWO Justices remove *W. S.* his Wife and Children from *Cuerden* to *Laland;* the Churchwardens and Overseers of the Parish of *Laland* appeal to the Sessions from this Order, and the Justices at the Sessions state the Matter specially; That *W. S.* was bound Apprentice by Indenture in 1715 to *J. S.* to serve him for the Term of seven Years; that twenty Shillings was paid with him as an Apprentice Fee; and he served three Years of his Time under this Indenture in *Cuerden;* then the Master died, and the Duty of Sixpence in the Pound had not been paid for the twenty Shillings paid at first, nor the Indenture of Apprenticeship ever stamped according to the 8th *Anne*, *c.* 9. §. 32. and the Sessions reversed the Order of two Justices. These Orders being removed by *Certiorari*, Mr. *Fazakerly* moved to quash the Order of Sessions, and he said that by the Statute 3 and 4 *W.* and *M.* an Appren-

tice may gain a Settlement without Notice. And by the Statute of *Anne*, any Indenture not stamped is void, and unavailable in any Court or Place, and therefore the Apprentice did not gain a Settlement by this Instrument, because it was not stamped; and an Apprentice as such must get a Settlement by an Indenture properly and legally qualified with all necessary Ingredients; and this not being so, it is void. Now if he can gain a Settlement, by Force of this Indenture, it is available to this Purpose, and therefore contrary to the words of the Statute.

This Indenture is void *ab initio*, and if the Party does not take Advantage of the Indulgence given by the Statutes, he shall never be aided by saying the several Continuances of this Act shall make this a good Indenture.

Mr. *Bootle*, Senior: By the 3 and 4 *W.* and *M.* a Person cannot gain a Settlement as an Apprentice, without being bound by Indenture. So that the Question now is, Whether this can be called an Indenture? And this Indenture upon a Parity of Reason shall no more be good than a Deed inrolled, if it be not inrolled within six Months, according to the 32 *H.* 8.

Mr. *Starkey*: The Words of the Statute are plain, that such Indentures shall have no Force. And if it be said the Settlement was gained before the Duty became due, then there was no Notice in Writing; and then the Settlement depends upon the Indenture which is void. A Recovery would be good by Bargain and Sale inrolled till six months; but if not then inrolled, it would be bad. It was answered, That by the Statute 8 *Anne*, Sixpence in the Pound is to be paid for any Sum under fifty Pounds, and a Penalty inflicted on the Master and Apprentice. The Act required to be done by the Statute is not to be the Act of the Apprentice, but of the Master or Mistress, and they are to procure the Indentures to be stamped. The Penalty on the Apprentice is, that the Indentures shall be void, and he shall not set up any Trade; but it shall not deprive him of the Benefit of the Settlement he had gained by his Residence.

Mr. *Reeve* on the same Side said, That *W. S.* was bound by Indenture to serve seven Years; and from *February* to *Whitsontide* he was with his Master, and then the Indenture was executed and dated back as in *February*. The Man had gained a Settlement before the Duty became due by the Act of Parliament, and nothing that was to be done subsequent to this can devest him of his Right to a Settlement in *Cuerden*, where he had served. But it was held by the Court, that the Words of the Act are positive, and therefore it was no Settlement, and the Order of Sessions was quashed.

Hilary, Fourth of *George* the Second.

The Inhabitants of Kinfare *against* Kinswinford.

TWO Justices remove a Man from *Kinfare* to *Kinswinford*, against which Order they appeal. And the Sessions quashed the Order of two Justices, and stated the case specially, "That the Pauper rented a Tenement, with the Appurtenances, in *Kinfare* for three Years and upwards, at a yearly Rent of four Pounds ten Shillings, and *paid all parochial Taxes for the same* in his own Right, but was not rated in the Parish Books, but the Name of *Richard Coates* the Tenant that rented the said Tenement, before the Pauper, was kept in the levy Book." These Orders being removed by *Certiorari*, It was moved to quash the Order of Sessions on this Exception, That here it appeared the Pauper was made to pay the Rate, though he was not rated to it; and a Payment without being rated does not gain a Settlement within the Words of the Statute 3 and 4 *W.* and *M. c.* 11. which says there shall be a Rate made upon the Party, and a Payment in Pursuance of that Rate, which is not so in this Case. And upon the Rule to shew Cause, the Court quashed the order of Sessions, and held that the Pauper was not charged within the meaning of the Statute, for the Rating there mentioned must be taken strictly, it being designed to supply the Place of Notice in Writing; and Order of removal was confirmed; the King against the Inhabitants of *Sealon Tongall*, *Mich.* 13 *Geo.* 1.

Michaelmas, Fourth of *George* the Second.

The King *against* The Inhabitants of Carlton-Colvill.

TWO Justices of the Peace made an Order, upon the Complaint of the Church-wardens of the Parish of *Wanxford*; *A.* and *B.* two Justices *Quorum unus*, remove *William Dennington* and *Susan* his Wife, from the Parish of *Wanxford* to the Parish of *Carlton-Colvill*. The Inhabitants of *Carlton-Colvill* appeal from this Order to the Sessions, where the Matter was specially stated. But on hearing Counsel on both Sides, and it appearing to the Court that the said *W. D.* about six Years since, by Indenture duly executed, bound himself an Apprentice to one *Robert Day of Carlton-Colvill*, and lived with the said *R. Day* as his Apprentice at *C. C.* aforesaid, for the Space of two Years or thereabouts, and that five Pounds were paid or agreed to be paid to the said *R. Day*, with the said Apprentice, by *J. Dennington* his Mother. That the Duty was never paid, nor tendered to be paid, nor the said Indenture stamped, nor tendered to be stamped pursuant to the Statute 8 *Anne*, *c.* 9. Now this Court adjudging the said *W. D.* to have gained a legal Settlement at *C. C.* aforesaid, by his living and Serving there in Manner aforesaid, confirm the Order of Removal. Mr. Serjeant *Urlin* moved to quash these Orders; and Rule made to shew Cause.

Hilary Fourth of *George* the Second.

The King *against* The Inhabitants of Preston in the County of Gloucester.

Glouc. ss. TWO Justices remove a man from *Dunsborne Abbotts* to *Preston*. The Parish of *Preston* appeals from this Order, and upon the Appeal the Case appearing to be, that *Charles Hoare* was a legal Inhabitant of *Preston*, and that afterwards he was legally hired for a Year to *C. L.* of *B.* and served the said *L.* under such Hiring, until five or six Days before the end of the Year; and that he had served his full Year, but that *John Howes* and one *Wise*, then two substantial Inhabitants of *B.* gave him two Guineas to leave his said Master *L.* and go out of the said Parish of *B.* before his Year was expired (the said *Charles Hoare* having the Banns of Marriage published in the Church for his Marriage) and thereupon the said *C. H.* went to his said Master, who insisted upon nine shillings to let him go, and which was abated out of his Wages, and then departed from his Service; which two Guineas was afterwards repaid to *Howes* and *Wise* by the Officers of *B.* and allowed out of the Rates of the said Parish; but it not appearing unto the Court that *L.* was privy to the Payment of the said two Guineas till after he had discharged the Pauper, and that the said *L.* received no Benefit by the said two Guineas being allowed out of the said Poor's Rates, he not being rated to the Poor in the said Parish of *B.* the Sessions confirmed the Order of two Justices. These Orders being removed by *Certiorari*, an Exception was made to the Order of the two Justices, That it did not appear they had any Jurisdiction in this Case, for here is *Glouc. ss.* in the Margin, and the Direction is to the Officers of *Dunsborne Abbotts* to execute, and to the Officers of *Preston* to obey; reciting, *Whereas* Complaint has been made unto us, *A. B.* two of his Majesty's Justices of the Peace *(Quorum unus)* for the County of *Gloucester*, by the Officers of *Dunsborne Abbotts* aforesaid; so that it does not appear in what County *Dunsborne Abbotts* is. As to the Order of Sessions, it was argued in Support of the Removal and Settlement, that as the Justices have not determined this to be a Fraud, though stated as a Fraud in the Order of Sessions, the Court will not intend a Fraud was practised in this Matter. The Parish of *Kimpton* against *Pauls-Walden*, *Easter* 13 *Geo.* 1. There the Court was of Opinion that as the Fraud was not expressly found and determined by the Justices, the Court could not adjudge it, and finding Evidence of a Conversion is not finding the Conversion, 10 *Co.* 56. *Contra*, The King against the Inhabitants of *Pepperhaugh* and *Frencham*, *Easter* 1 *George* 1. A Man was hired for a Year from such a Day to *Michaelmas*, which upon Computation wanted a Day of a Year, being then Leap-Year, and the Justices did not determine this to be a Fraud.

And Lord Chief Justice *Parker* then held, that as the Case was stated, though the Justices

should have adjudged this a Fraud, and this Court does not ordinarily intend a Fraud; yet where the Fraud is apparent, as in the present Case, the Court will take Notice of it, and not suffer the Acts of one Parish to prevail to the Prejudice of anoher. 1 *Cro.* 233. But the Court in this Case held, that on the Foot of the Statute he could not get a Settlement by this Service, not having served out his Year; *but quashed the Orders* on the Exception *taken to the Order of two Justices, not being certainly set forth that* Dunsborne Abbotts *was in the County of* Gloucestershire.

Michaelmas, Eighth of *George* the Second.

The King *against* The Inhabitants of St. George Hanover Square.

UPON the Appeal of St. *George's* against an Order of two Justices, whereby *Alice Wheeler* a single Woman, who was likely to become chargeable to St. *James's Westminster*, was removed from thence to St. *George's* as the place of her last legal Settlement; and the Sessions state the Matter specially, That the said *A. W.* was bound by Indenture a Parish Apprentice in the said Parish of St. *George*, to *George Lester*, where she lived and gained a Settlement, by serving the Space of forty Days under the said Indenture; and that afterwards, and during the Time of her Apprenticeship, she was by Parol-Agreement hired out by the said Master *G. L.* to one *J. Hall* in the Parish of St. *Mary le Bone*, and there lived and lodged above forty Days (*viz.*) for the Space of one Year and upwards, the said Apprenticeship continuing. That the said *G. L.* her Master received her Wages from the said *J. H.* and found her Clothes; and on Debate the Question was, Whether the said *A. W.* by her Residence above forty Days in *St Mary le Bone*, gained a Settlement in that Parish or not?

The Court was of Opinion that she did not by such Residence gain a Settlement there; but that by her being bound Apprentice to the said *G. L.* in St. *George's*, and living there and serving above forty Days, she the said *Alice* gained a legal Settlement in St. *George's*. And the Court was of Opinion that the said Parish of St. *George* was the Place of the last legal Settlement of the said *A. W.* and doth therefore disallow of the said Appeal, and ratify and confirm the said Order of the said two Justices.

A Rule had been granted to shew Cause why this Order of Sessions should not be quashed here, being on the special State of the Case a Settlement in *St Mary le Bone*. In shewing Cause was cited, *Castor* against *Aicles*, and the King against *Puckleton*, *Trin.* 10 *Geo.* 1.

Mr. *Hollings* on the same Side insisted the Apprentice had gained no Settlement in *St. Mary le Bone*, and said the Distinction had been where the Service was with the Consent of the Master; there it was good, otherwise not; which was the Case of the King against *Puckleton;* he also cited the King against *Ivinghoe*, *Easter* 4 *Geo.* 1. and the Case of *Trinity* against *Shoreditch*, which he presumed would be cited on the other Side, *Mich.* 3 *Geo.* 1. and distinguished it from the present Case; because in that Case the Pauper was bound to *Trueby*, but in Fact was to serve one *Green;* mentioned *Allhallows* against St. *Olive's Southwark*, *Trin.* 9 *Geo.* 1. The King against the Inhabitants of *Islip*, 7 *Geo.* 1.

Mr. *Marsh* on the other Side: This Question arises on the 3 and 4 *W.* and *M.* for Hiring for a Year, and the 8 and 9 *W.* 3. requires a Service for a Year. That Apprentice continuing there could gain no Settlement, but by Consent of the Master; insisted the Case of *Castor* against *Aicles* was with him, and so was *Allhallows*, and the King against *Puckleton*.

Mr. *Marsh* also cited *St. Mary Colechurch* against *Deptford* as to Inhabitancy. Chief Justice agreed the forty Days Residence, with the Consent of the Master under an Hiring and Service, is good; but had a Doubt in this Case whether the Master could hire her out; and if the Justices, as she appears to be a Parish Apprentice, could not have compelled the Master to take her back again; said he could not consider this as an Assignment.

Mr. Justice *Page* agreed with the Chief Justice in his Doubt.

Mr. Justice *Probyn:* The Question is, Whether this Service does not gain a Settlement, as it is the last forty Days Residence under her Apprenticeship? Thought it was, and that the Master concurring, it was a good Settlement within the 3 and 4 *W.* and *M.* Justices

have no Power to bind to Trades only in Husbandry. *Non Constat* but this Service was in Husbandry; not necessary the Apprentice should always continue in his Master's House; if he is in his Master's Service the last forty Days, it is a Settlement; mentioned the Case of the Stage-Coachman who lived at *Wycomb*, and the Service of his Master who lived at *Oxon*; thought the Settlement in *St. Mary le Bone.*

Mr. Justice *Lee* agreed with Mr. Justice *Probyn*, and said the Reason of the King against *Puckleton* was, because there was no Consent of the Master; but thought the Apprentice here continuing in her Master's Service, she was bound, which was the Foundation of the Qualification; *Castor* against *Aicles*, forty Days Inhabitancy.

Chief Justice: The Case is now on a different Point; said if this was considered as a Service in another Parish, in the Business of the Master to whom she was bound, that it is a good Settlement by the forty Days Inhabitancy in *St. Mary le Bone*; 'tis necessary there should be a Binding in some Parish, and on the Statute of *W.* 3. not necessary the Hiring and Service should be in one and the same Parish.

And *by the whole Court:* The Apprentice is well settled in *St. Mary le Bone*, and quashed the Order of Sessions.

Easter, Eighth of *George* the Second.

The King *against* Heasman.

MOVED to quash an Order made at the Quarter-Sessions for the County of *Sussex*, for discharging an Apprentice from his Master upon the following Exceptions.

First Exception; That the Complaint was made originally at Sessions without any previous Application to a Justice, for that the Sessions have no original Jurisdiction; for which was cited the Cases of the King against *Gately* in *Carthew* 198. and the King against *Cherry* in 5 *Mod.*

Second Exception; That the Sessions may proceed on the Appearance of the Master, but can only proceed (where Master makes Default) when bound by Recognizance or summoned.

Third Exception; That the Reasons set forth in the Order are insufficient, which are that the Apprentice was used very unkindly, and that the Master refused to continue him in his Service, or entertain him; for which was cited the King against *Davis*, *Trinity* 12 of *George* 1. where Master said he would not take his Apprentice again, which was not allowed to be a good Reason, for by the Statute the Reasons must be where the Master shall misuse or evil intreat his Apprentice.

To the first Exception it was answered, That the Order was good, according to the Case of the King against *Johnson*, in 1 *Salk.* 68. where it was held, that the Sessions may make an original Order to discharge an Apprentice without a previous Application to a Justice of the Peace.

To the second Exception in *Dillan's* Case, 1 *Salk.* 67. it was held that Justices may proceed at Sessions to make an Order to discharge an Apprentice though the Master does not appear; and in *Ditton's* Case 1 *Salk.* 490. this second Objection was taken, that the Master did not appear, and insisted that it is directed by the Act, the Discharge is to be made on the Appearance of the Master. But it was resolved by the Court, That the Act must have a reasonable Construction, so as not to permit the Master to take Advantage of his own Obstinacy, and it would be very hard, supposing the Master runs away, the Apprentice should never be discharged for want of Master's Appearance; and the Objection was over-ruled. *Far.* 155. 1 *Mod.* 2.

To the third Exception; The Master refused to entertain or continue him in his Service as his Apprentice, which is evil intreating him; the King against *Venables*, latter end of *George* 1. Court presumed all right where there is a proper Jurisdiction; therefore Sessions having a Jurisdiction of the Matter, and Power to examine into Facts and determine upon Merits, all shall be presumed well done unless the contrary appears, and they are not obliged to set forth the Reasons of their Adjudication; and for ought appears in the Order, the Master might be there, or had Notice to be there.

Lord *Chief Justice:* As to the first Exception, there are Cases both ways; the latter Cases,

that Sessions may proceed, though it might be wished Parties would go before one Justice, yet according to latter Resolutions good; for first Justice cannot make a compulsory Order.

The second Exception is of great Weight, and not sufficiently got over. As to Orders in general, though not set forth Party was summoned or appeared, they are good; because in Cases where the Acts do not expressly require an Appearance; but here the Act expressly requires an Appearance, therefore ought to be set out that he appeared or was summoned, and made Default.

To the third Exception; Reasons must be set out, using unkindly not sufficient; refusing to entertain him according to his Articles seems to be not proper Entertainment; seems a little uncertain, but I cannot give any Opinion upon that, the Order being bad upon the second Exception.

Mr. Justice *Probyn:* The Order is an Act of four Justices, not properly an Act of the Court; first Justice certainly has no Power to make an Order.

As to the second Exception; If Master on Notice will not appear, Justices may proceed, but this does not appear.

As to the third Exception; *Davis's* Case cited before; there only said Master would not take the Apprentice; here is an absolute Refusal to receive and entertain him according to his Articles, which is misusing and evil intreating.

Mr. Justice *Lee* agrees with Mr. Justice *Probyn* in his Observations on the Causes assigned for Discharge.

Sessions have original Jurisdiction to be executed by four Justices as the Act directs.

Distinction between setting out a Summons or not, is in Convictions necessary; in Orders, generally speaking, not so; but here the Jurisdiction arises upon the Appearance of the Master, which not being set out in the Order made at the Quarter-Sessions, it is for that Reason bad, therefore must be quashed.

Michaelmas, Thirteenth of *George* the Second.

The King *against* Sparrow.

A *MANDAMUS* being granted to the Justices of the Peace in *Ipswich*, to appoint Overseers of the Poor, the Return was, that they had appointed them, *viz.* on the first of *June*. It was said that the first of *June* being above a Month after *Easter*, it was void. See the Statute.

Solicitor General for the King insisted, that though it was not said in the Return to be a Month after *Easter*, yet the Court would take Notice of the Kalendar, *Salk.* 626. *Trin.* 6 *George* 1. *Hoyle* against Lord *Cornwallis;* there a Writ of Inquiry was executed the 15th of *June*, which by the *Almanack* appeared to be on a *Sunday*, was held not good.

The other Side agreeing this Point to be so; he then insisted that this being an Officer created by Statute, he must be appointed according to the Statute in every Respect, if not, it was void.

Mr. *Hollings* on the other Side argued, that the Appointment was not void, though not made within a Month after *Easter;* because that was only directory to the Justices, as Rates are directed to be made Monthly, yet not void, if otherwise; from the whole Tenor of the Statute it appears that it is intended that the Justices should have Power over the Officers during the whole Year, and there are no negative Words that determine the Time of appointing Overseers.

The Statute directs to what Age Children shall be bound, yet that was held to be only directory in the Case of *Charlbury* against *Ascot*, 9 *Geo.* 2. as to Bastards it says by Justices residing in or near the Parish, yet that is not necessary. *Cro. Car.* 92, 394. the King against *Morris, Hill.* 8 *Geo.* 2.

Such a Construction as they contend for is very inconvenient, for if Appointment is made within the Month, and afterwards quashed; or if the Overseer dies after the Month, no new one could be appointed.

Lord *Chief Justice:* It has been held that the Justices being of the Division (as the

Statute mentions) is only directory, but there has been no Determination as to the present Question.

There may be a Difference between Common Law Officers, and Officers that are created by Statute.

Affirmative Words do sometimes imply a Negative, but not always, as in Charters, *Bro. Abr.* Tit. *Corporation.*

Lord *Coke's* Opinion in his Comment upon the 23 *H.* 8. 4 *Inst.* 41. seems to be, that the Time mentioned in a Statute is binding.

Mr. Justice *Page:* My present Opinion is, that this is only directory; when a Time is limited in a Charter for making Elections, we never grant *Mandamus* to go to Election till that Time is expired, and if they cannot elect after, to what Purpose is the Writ granted.

Mr. Justice *Probyn* and Mr. Justice *Chapple* inclined to think the Appointment not good, because no Necessity, as there would be in the Case of Death, or quashing the Appointment. Adjourned.

In *Hilary* Term following Chief Justice delivered the Opinion of the Court.

The Question is, Whether an Appointment of Overseers of the Poor, by Justices of the Peace, made above a Month after *Easter*, is good? the Statute saying "at *Easter*, or within one Month after."

As to the Exception, that this Court is to take Notice of the Kalendar to shew when *Easter* was; it is certain we must, and so it was held in *Hoyle* against Lord *Cornwallis;* the main Question depends upon the 43 *Eliz. c.* 2. and 13 and 14 *Car.* 2. It was said that the Statute laying Penalty upon the Justices not making an Appointment within Time, implies that 'tis void if done after; but it is just the contrary, as appears from 2 *Ro. Abr.* 259.

As to the Objection that it is an Office created by Statute, and therefore that it implies a Negative, though sometimes it is so, yet not always, as in Lord *Coke* upon *Magna Charta, c.* 11. 2 *Inst.* 23. and *c.* 12. 2 *Inst.* 25. 3 *Inst.* 136.

It is a Rule that Judges always construe these Sort of Acts so as to advance the Remedy intended by them; and this Statute is to be construed liberally; and so it was done in the Case of the King against the Inhabitants of *Rufford, Trin.* 7 *Geo.* 1. and in the Case of *Utoxeter, Geo.* 2.

In the Case of *Rufford* it was objected to the *Mandamus*, that it was after the Month, but yet that Writ was granted upon the Reason I before mentioned; and so it was held in the Case of *Utoxeter;* and although these *Mandamus's* were granted upon the 13 and 14 *Car.* 2. yet that is the same, for that expressly refers to the 43 *Eliz.*

Among the Rules laid down 3 *Co.* 7. for construing Statutes, one is, that Judges ought to give Force to Remedies given by a Statute, and the way to do that in the present Case is to construe these Words to be directory only.

In *Foote* against *Prowse, Easter* 12 *Geo.* 1. the Charter of *Truro* appointed, that Aldermen should be *annuatim eligend'*, and this Court held that they must be elected yearly; but upon Error in the Exchequer-Chamber, that Judgment was reversed, and the Reversal was affirmed in the House of Lords upon that Reason, that those Words were only Directory, *Easter* 9 *Geo.* 1. the King against Corporation of *Tregony*, where was a Power *to hold over.* The Court held that they would grant no *Mandamus* to elect, but upon Death or Removal they would; here has been no Default in the Parish, therefore from the Nature of the thing we ought to allow this Appointment.

Trinity, Fifteen of *George* the Second.

The King *against* The Inhabitants of Kirton, Nottinghamshire.

Special Order stated.

THAT the Pauper rented a Tenement at ten Pounds *per Ann.* and that it had been so let for five Years before. But that the Tenement was usually let at seven Pounds *per Ann.* and that when he was told it was too dear, he said he did it to gain a Settlement; but the Sessions did not adjudge it a Fraud.

Quære, Whether he gained a Settlement by this Renting?

Chief Justice: The Consideration must be, Whether upon the State of this Case he rented a Tenement under the Value of ten Pounds *per Ann.* for if not, it is a good Settlement; the not having a sufficient Stock is nothing to the Value.

Mr. Justice *Page:* I have always took it that the Party claiming the Settlement must shew that the Tenement was of the Value of ten Pounds *per Ann.* and not that the other Side must shew it to be under that Value.

But in this Case all the Court agreed that this was a good Settlement.

The same Term.

The King *against* The Inhabitants of Great Bedwin, Wilts.

TWO Justices make an Order of Removal in this Form, *viz.* in the Margin, *Wilts, to wit.* To the Church-wardens and Overseers of the Poor of the Parish of *Wilcot*, and to the Church-wardens and Overseers of the Poor of the Parish of *Great Bedwin* in the said County.

Whereas *Charles May*, *Mary* his Wife, *Joan* their Daughter aged fifteen, and five more Children, naming them, have for some Time dwelt in the said Parish of *Wilcot*, being allowed so to do, by Reason of a Certificate bearing Date *December* 27, 1724. under the Hands and Seals of the Church-wardens and Overseers of the Poor of the said Parish of *Great Bedwin*, and allowed by two Justices of the Peace for the County of *Wilts* aforesaid, according to the Directions of the Several Acts of Parliament in that behalf made and provided: Now the said *Charles May*, being reduced to great Poverty, lately applied to the Church-wardens and Overseers of the Poor of the Parish of *Wilcot* aforesaid for Relief, who accordingly did relieve him, they therefore remove the said *Charles May*, etc. from *Wilcot* to *Great Bedwin*, that being adjudged by us, by a due Examination of the Premisses, to be the Place of the last legal Settlement of the said *Charles May*, etc.

Great Bedwin appealed from this Order to the Quarter-Sessions, who upon Motion amend the Order, being of Opinion that the Amendments only supplied Defects in Form. They state the Facts specially, and insert a Complaint by the Church-wardens and Overseers of *Wilcot*, and also that the said *Charles*, *Mary*, etc. were actually become chargeable to *Wilcot*, as they thereby adjudge, and also that one of the Justices was *then* of the *Quorum*. They confirm the said Order so amended.

It was objected to these Orders,

1. That the original and amended Order was directed to the Officers of both Parishes, without saying in what County *Wilcot* lies, it being only *Wilts, to wit*, in the Margin, which can only refer to the last antecedent Parish; therefore it did not appear in what County *Wilcot* was.

2. The Parts amended by the additional Insertions are Substance, and the Sessions were wrong in amending, since they might have quashed the Order for want of Form, and two Justices might have made a new Order.

6. The Statute 5 *Geo.* 2. enables the Justices to amend Form only.

4. They have inserted upon the Complaint of the Church-wardens and Overseers, which is Substance; and also inserted that they are actually chargeable, which is the material Substance of an Order of Removal of a Certificate Person; and also have inserted the Word *then*.

5. That the Certificate was not said to be attested by two or more credible Witnesses, according to the 8 and 9 *W.* 3.

6. That by the Statute the Amendments must be made before the Examination of any Witnesses upon the Appeal.

A Rule to shew Cause why these Orders should not be quashed was granted in *Easter* Term, and enlarged to the first Day of this Term; and now Mr. Solicitor General came to shew Cause, and insisted these Amendments were only in Form, for that the Substance was preserved. The Pauper did apply and complain that they wanted Relief, and they were relieved.

This Act of Parliament ought to be liberally construed.

The Facts are clear, *viz.* that *Great Bedwin* did certificate them, and that under that Certificate the Parish of *Wilcot* did receive them; *said* will as to both Parishes refer to the County in the Margin.

Mr. *Gundry*, on the other Side: The Words of the Statute shew that the Justices are to amend before they proceed to Examination of Witnesses, and Proof. Matter of Form is where there is a Misdirection, but this is Matter of Jurisdiction; and by the amended Order it does not appear that *Wilcot* is in the County of *Wilts*.

There was a Case, the King against the Inhabitants of *Great Milton*, *Mich.* 11 *Geo.* 2. moved on this Act, but went off without a Determination upon an Agreement of the Parties.

Mr. *Mason* on the same Side insisted, that the Justices had no Jurisdiction to remove a Certificate Person till he was adjudged to be actually chargeable, and the Adjudication is Substance. So also is the want of shewing the County, which is not aided by a Reference to the Margin; the King against the Inhabitants of *Preston*, *Hil. Term* 4 *Geo.* 2.

Chief Justice: There has been but one Case in this Court on this Act since the making of it, but that was not determined.

The present seems to be a very strong Case against the Power of amending; "They may and shall amend Defects in Form." That seems to be upon the Face of the Order, and afterwards they are to proceed to examine.

Inclined to believe some of these Defects amended were the Merits of the Case.

1. There must be a Complaint from the Overseers, otherwise the Justices have no Power to remove.

2. A Certificate Person must be adjudged to be actually Chargeable.

The Two Justices have stated the Fact in their Order, but do not say they became chargeable. The Overseers might relieve them, and not charge it to the Parish. It is very probable that these Amendments were the very Merits.

If an Order be quashed for want of Form, it is not conclusive; so if generally and removed here, and a Defect appears, but if there be none it is conclusive.

These Amendments were the Merits upon which this Case depended. No Answer has been given to the Objection of the County in the Margin, to which there is no Word of Reference in the Order; but this is not material to be determined at present.

It would be a detrimental Construction of this act to take it so largely, and would be giving the Sessions an original Jurisdiction.

Mr. Justice *Page* agreed, and said this Construction would take away the Jurisdiction of the two Justices. And by the whole Court both Orders quashed.

Easter, the Thirteenth of *George* the Second.

The King *against* Howlett.

MOTION to quash an Order of bastardy.

First Objection; It is made for relief of the Guardians, etc. of the Poor in *Colchester*, not of the parish.

Second Objection; It is to pay to them a certain weekly sum, etc.

By the 43 *Eliz.* all Orders of this kind must be for Relief of the Parish, therefore the Justices have no Authority to make such an Order.

Sir *Samuel Prime* said in Answer, that by a Statute of the 8 and 9 *W.* 3, these Guardians of the Poor are instituted in the room of Church-wardens and Overseers, that they are to make all Rates, etc. and all other Persons are excluded from medling with the Poor there.

But *by the Court:* The Order is plainly ill, and must be quashed.

The same Term.

The King *against* The Inhabitants of Oram in the West Riding of Yorkshire.

A PERSON agreed to take a Poor Boy Apprentice if his Friends would cloath him, upon which the Grandfather agreed to give the Master thirty Shillings to cloath the Boy;

accordingly the Boy was bound, and the thirty Shillings paid, but the Indenture was not stamped according to the Statute of the 8th of Queen *Anne.*

It was therefore objected, that this Indenture not being stamped as the Act directs, was void to all Intents and Purposes, as held in *Leyland* and *Cuerden, Easter* 4th of King *George* 2.

2. That this being a sum agreed for, it ought to be writ in Words at length; and the Statute says any Sum directly or indirectly.

On the other Side it was said, that this thirty Shillings was not to be considered as a Premium, or Sum given with the Boy, but only as Money expended in cloathing him to make him fit to go Apprentice, therefore not within the Act, for it is stated that the Master said he would take him, if his Friends would cloath him.

Lord *Chief Justice:* I think the Statute relates to the Sum received by the Master with his Apprentice; here the Master by Agreement with the Grandfather laid out thirty Shillings for Cloaths, which was repaid by the Grandfather before the Execution of the Indenture, so that the Master was only Agent for the Grandfather in cloathing the Boy, therefore it cannot be said to be a Sum received with the Apprentice.

The second Clause of the Statute does not say the Indenture shall be void, if the Sum is not inserted at length, only lays a Penalty upon the Master not doing it.

The Act means Money or other things received for the Master's Benefit, which this is not, for he was not obliged to find the Boy Cloaths before he was bound.

All the Court agreed, and the Order was confirmed.

Trinity, Thirteenth and Fourteenth of *George* the Second.

The King *against* the Inhabitants of Welbeck, Nottinghamshire.

MANDAMUS to Justices to Appoint Overseers of the Poor, they return that it is not a Vill or Township, nor ever reputed a Vill or a Township. 13 and 14 *Car.* 2.

It was insisted that the Return was ill. *Stokelane* against *Dolting, Hilary* 10th of Queen *Anne.* If an extraparochial Place consists of a Number of Houses sufficient to supply Officers, the Justices may appoint them; *Carth.* 515. *Dalham* against *Denham* in *Easter* Term 8 *George* 2. it was held that two Houses being neither a Vill or Township, Pauper could not therein gain a Settlement; but that is not this Case. The King against the Inhabitants of *Rufford, Easter* 8th of *George* 1. The Return must answer the Suggestion of the Writ, which is that there are many Houses and Inhabitants; which the Return does not deny, but only says that it is neither a Vill nor Township.

Mr. *Solicitor General* on the other Side: The single Question is only whether this Return answers the Writ? to the rest, of what has been said I agree.

Where the Return admits it to be a Vill, it is a Case within the Statute, and so was the Case of *Rufford.*

If a Township or Vill, it is within the words of the Statute; but if it cannot be called a Township or Vill, it is not within it. *Easter* 10th of *George* 2. Inhabitants of *Stoke-Prior* against the Manor of *Grafton,* there appeared to be five Houses, and the Court thought that not sufficient.

We say, "Neither is nor ever was reputed a Township or Vill, therefore it is not within the Reason of any of the Cases that have been adjudged upon the point of extraparochial Places."

To this it was replied, that the Writ supposes several Inhabitants and Farmers and Householders there; which is not denied; and whether it is called Vill or Township is not material.

Lord *Chief Justice:* In *Stoke-Prior* against *Grafton* it appeared that was an antient Capital Messuage, which was divided into five Farm-houses, but that Case was never solemnly determined; but the Rule made absolute without Defence.

The Writ commands them to appoint Overseers of the Vill of *Welbeck,* and they return that there is no such Vill, which seems an Answer to it, and whether true or false, is a Fact we cannot determine.

If there is no such Vill, how can they appoint Officers; if they have made a false Return, you must apply for an Information.

To this Mr. Justice *Page* agreed.

Mr. Justice *Probyn:* I think it no Answer, for if it consists of a Number of Houses and Inhabitants, though never called a Vill, yet it may be within the Statute, and whether it is a Vill or not, to this Purpose, this Court will determine, and though never called so, this Court may judge it to be so for this Purpose, and therefore they ought not to return it in so general Words, for it does not answer the Intent of the Writ.

Mr. Justice *Chappel:* They expressly deny that it either is or ever was reputed a Vill, several Houses and Farmers, etc. that may be true, though but two, and that does not make it a Vill; it is a matter of Evidence whether a Vill or not, and he thought the Return good, which was afterwards held good by the Court.

The same Term.

The King *against* The Inhabitants of Campden.

ORDER of Sessions stated that *M. Calcot* was hired for a Year, to work in Spinning at one Shilling and Sixpence *per* Stone, but not obliged to work any certain Time or Quantity, nor to live with her Master, nor to be provided for by him, but in Fact did lodge in his House, and further that she was at Liberty to play when she would, but not to work for any other Master.

By the Court: This Case has all the Requisites of the Statute, and is a good Settlement.

Hilary, Twelfth of *George* the Second.

The King *against* Harman.

A *CERTIORARI* having been granted to remove Orders appointing Defendant Overseer of the Poor of St. *Clement's Danes.* It was moved to supersede the Writ; because by 43 *Eliz.* an Appeal was given to the Sessions, and therefore he ought to take that Method, and not come here till that was determined; and cited *Salk* 147. to shew that was the Rule of this Court; and also the Case of *Warwick*, where it was said, that a *Certiorari* was superseded for that Reason.

But it was answered, and so resolved by the Court, That that Rule was only with regard to a Prosecutor, who should not take the Benefit of Appeal from the Party grieved; but if he would waive the Benefit of it he might so, where the Time of Appeal was limited, as in Cases of Orders of Settlement it might be proper to stay till that Time was expired, but here 'tis not so; and the Party is not obliged to Appeal, but might come here for a *Certiorari* if he thought fit, and therefore denied the Motion.

Michaelmas, the Thirteenth of *George* the Second.

The King *against* Harman.

SEVERAL Orders were made by Justices of the Peace, which being removed unto this Court, one of them was to appoint five Overseers of the Poor for the Parish of St. *Clement's Danes* (one of which was Defendant *Harman*); there were also several others for levying the Penalty upon him for not executing the Office; and now an Exception was taken that the Statute 43 *Eliz.* impowered Justices to appoint only four; and a Motion to quash these Orders.

A Rule being made to shew Cause, it was now insisted for the King, that the 43 *Eliz.* impowered the Justices to appoint four; but no negative Words that they should not appoint more than four; and that the 13 and 14 *Car.* 2. *c.* 12. §. 21. impowered them to appoint two *or more* in Vills or Hamlets, which he insisted was an Implication that they might appoint any Number they thought necessary.

2. That as an Order may be good in Part and bad in Part, so this might be good as to

Harman, though bad as to one of the other, he being the first named in the Order; *Easter* 13 *Geo.* 1. the King against the Inhabitants of St. *James's Clerkenwell*, four Overseers appointed, and two were said to be inhabitants, but two were not said to be so; quashed as to them, though held good as to the other.

Mr. *Solicitor General on the same Side:* That nothing was regularly before the Court but the Appointment, for the Summons, Warrant of distress, etc. he said ought not to have been removed, and therefore the Court would not take Notice of them, and the only Question now to be considered was, Whether the Appointment of five Overseers be good? Many Powers are allowed to Justices which the Acts of Parliament do not warrant, but only permitted from a constant usage; as the Sessions exercising an original Jurisdiction in Case of Apprentices, was held good, only because it had been the universal Practice. So in the Case of *Bewdley*, the Court held a practice of Seven Years to be good even against the Words of an Act of Parliament, upon that Principle, that *Communis Error facit jus.*

Then he shewed that in this and many other of the great Parishes in *London*, they had almost constantly appointed above four Overseers; this Court therefore will be cautious how they open a Door to such great Vexation as would happen if this be void.

Mr. *Hollings on the other Side;* It is true Usage may explain doubtful Words in an Act, or where it has been practised from the Time of making the Law, it may be allowed as an Expositor of it; but that which is now insisted on is but modern, and long after the making this Act; for most of the parishes were not then in being in the Manner they now are; and this Practice is used only for Oppression, by naming Numbers to the Office, and taking Fnes for not Serving.

The Act says four, three or two, which Manner of Expression shews four to be the most they should nominate; where the number is discretionary, the Statute expresses it in a different Manner, as *two or more* Justices etc. The Statute 13 *Car.* 2. refers to this, and is therefore confined to four.

2. The Justices having exceeded their Power, the whole Appointment is void, and no body can say which of these Persons is to be rejected, for the last is as much appointed as the first.

The Return of the Warrant of distress is according to the Command of the Writ, and it is an Adjudication of the Forfeiture.

1. It appears in that, that *Harman* never accepted the Office, Yet the Justices convict him of *Negligence* in Execution of the Office, which cannot be.

2. The Notice appears not to be personal. 5 *Mod* 419.

3. Several of the Meetings there mentioned are *not monthly* Meetings.

4. One of the Offences is, that his Servant refused to accept the Rate Book.

5. Here are Several Offences which cannot be joined in one Conviction, and one is, not receiving a Rate, and does not say it was tendered by a Parishioner.

Lord *Chief Justice:* Here are two things to be considered.

1. The Appointment of Defendant to be Overseer.

2. The Warrant of Distress for levying Penalties upon him.

If this was to be considered only as a Warrant, it ought not to have been returned, and we then could take no Notice of it; but it is plainly an Order and Adjudication upon it; for what makes an Order but Words of Adjudication, as are here in this.

Then as to the Exceptions which have been taken to it, no Answer has been offered, nor can they be answered particularly as to his Refusing the Rate, and his Servant's Refusing the Book.

As to the Appointment, I am doubtful whether it comes before us in such a way as we can determine upon it, that is, whether we can determine it to be void, because it appoints more than four Overseers, *Drury's* Case, 4 *Rep.* and whether he that refuses can be prosecuted, for it is another Question; one of the five cannot be struck out. In the Case of *Clerkenwell* the Court had a plain Rule to go by, but here the Appointment must be good as to all, or void as to all, for they were appointed at once, and no Rule why one should be struck out more than another.

Mr. Justice *Page:* I think the Order is void, it is not discretionary as to the Number

to be appointed; for when the Law creates a new Authority, negative Words are not necessary to restrain it.

The Usage that has been insisted on is of no Weight; to which Chief Justice agreed, and said, that the Cases cited were not Setting up an Usage against an Act of Parliament, but only Constructions that those Cases were not within the Acts.

Mr. *Justice Probyn* agreed that what was said to be Warrant of Distress was plainly an Order, for it was an Adjudication; the Offences mentioned in it are of different Natures, and ought to have had separate Judgments. Thought the Order void.

As to the Appointment, gave no Opinion, but thought it was hard to say, that when a Statute has appointed a Number of Officers that the Justices have a discretionary Power.

I agree with Mr. Justice *Page*, that negative Words are not necessary in such Cases, nor can Usage be admitted against an Act of Parliament, unless it is general and universal, and for great length of Time, but the Usage here set up is only of a particular Parish, and for a small Time. I will not determine now whether the Appointment is void or not, but sure it is an intire Appointment, and which of the five shall stand we cannot determine.

Mr. Justice *Chapple* declared no positive Opinion, but his present Opinion agreed with the other Justices, that only four Overseers could be appointed, and that the Order was bad in the whole; therefore the Order for convicting Defendant and levying the Penalties quashed, and the Appointment to be further considered. In *Mich.* Term following this was argued again upon the point reserved, *viz.* Whether the Appointment of five Overseers was a good Appointment according to the 5th of *Eliz.* and after being debated on that Statute only, the Chief Justice said, though it might not be good upon that Statute, yet the 13 and 14 *Car.* 2. allows the Appointment of two *or more* in Towns and Villages, and that it had been construed to extend to all *England*, and therefore by that Statute more than four may be appointed; to which Mr. Justice *Chapple* and Mr. Justice *Wright* seemed to agree; but Mr. Justice *Page* not, and was clear that it was void, by 43 *Eliz.* But the Court would not quash the appointment, on account of the Number of Actions they thought it might produce, there having been this Practice of Appointing above four in some large Parishes for some Years past.

Michaelmas, the Fourteenth of *George* the Second.

Dunchurch Parish *against* The Parish of Pettam.

A PAUPER was bound to a Certificate Person, and assigned by him to a Person that lived in another Parish, and went and lived there accordingly. *Quære*, Whether he gained any Settlement under such Assignment and Service. By the Statute 12 *Anne*, *c.* 18. an Apprentice to a Certificate Person gains no Settlement.

N. B. The Apprentice was no Party to the Assignment.

An Apprentice must be a Party, or it is no Apprenticeship.

Apprentice not assignable by Law.

3 and 4 *W.* and *M.* the Settlement of a Servant shall be with his Master.

Mr. *Solicitor General:* An Apprentice by living with Assignee gains a Settlement. *Salk.* 68.

Statute 12 *Anne* says, that if a Certificate Person gains a legal Settlement, his Apprentice shall do so too even in the same Parish; which shews it is not void. This Settlement is not founded upon living with the Certificate Person, but by living with one who was no Certificate Person; and the Statute does not make the Indenture void. The King against the Inhabitants of *East Bidyford*, *Nottinghamshire*, Trinity, 1739.

It is stated that the Pauper assented to the Assignment; which will amount to a Contract or Hiring.

Lord *Chief Justice:* If the original Binding had not been to a Certificate Person, the Assignment would have gained a Settlement, and has been often so determined.

The Statute has only regard to the Parish where the Certificate Person resided, to prevent the Servants, etc. of such Persons gaining Settlements there; and I see no Reason to extend it to another Parish.

I think therefore he has gained a good Settlement under this Assignment, in the Parish where he served, by Virtue of it.

Mr. Justice *Page:* Whether the Binding was to a Certificate Person or not, it is the same with regard to a third Parish. A Binding to a Certificate Person is good as between Master and Apprentice, and to all Intents, except gaining a Settlement in that Parish. If therefore the Assignment was not void, the Assignment by Certificate will have the same Effect as in all other Cases.

Mr. Justice *Probyn:* This Binding is as good as if to a Person not coming by Certificate in all Respects, but what the Act excepts, therefore the Assignment is good.

Mr. Justice *Chapple* agreed. Order quash'd

Michaelmas, Twelfth of *George* the Second.

Parish of Souton *against* Sidberry.

CASE specially stated, *viz. T. Willis* the Pauper (who lived with his Family at *Souton*) having an Estate at *Sidberry* (which the Tenant gave up, and paid him eight Pounds for quitting it) went thither and lodged in an Alehouse as a Guest without having any certain Room there, and staid from *November* to *April*, but sometimes went to *Souton* (where his Children and Family were) and to other Places as his Occasions required, that he possessed and managed his Estate by repairing Fences, hoeing the Turnips, etc. and the Question was, Whether by this he had gained a Settlement at *Sidbury?* It was insisted,

1. That having an Estate there, a Residence of forty Days was not necessary, but if it was, that

2. Here was a sufficient Residence, for whether in his own House, or in an Alehouse, is all one, if he is irremovable; as where an Apprentice lodges in one Parish, and Works in another, he is settled where he lodges. *Eastwoodhay* against *Burclair*, *Hil.* 5 *Geo.* 1. *Watson* against *Monk*, *Hil.* 2 *Geo.* 1.

Then during the Father's Life the Children follow his Settlement, unless they have gained any of their own. *Marston* against *Hanny*, *Mich.* 1 *Geo.* 1.

On the other Side it was insisted, that a Residence of forty Days, even upon a Man's own Estate, was necessary by the Statute *Car.* 2. that such Residence must be as an Inhabitant, *Fawley* against *Trinity* 5 *Mod.* and that it must be forty Days *successively*, for forty Days Absence from the former Settlement was necessary to defeat that.

2. That in this Case the Children are not removable, because above the Age of Nurture, *viz.* 22, 18, 8. *Salk.* 470, 482. *Eastwoodhay* against *Westwoodhay*, *Trin.* 7. *Geo.* 1. St. *Michael* in *Norwich* against St. *Matthew* in *Ipswich*, *Easter* 2 *Geo.* 2.

As to the last Objection, the Court were all of Opinion that the Children were to be removed as Part of their Father's Family, not having gained any Settlement of their own, and as to the other Point adjourned.

In *Hilary* Term following, Mr. Serjeant *Hussey* insisted that living forty Days upon a Man's own Estate gains a Settlement; so held by Lord *Parker* in *Watson* against *Monk*, *Hil.* 2. *Geo.* 1.

Heaver against *Sundridge* in *Kent*, *Trin.* 8 *Geo.* 2. that it shall be intended a beneficial Lease, though not so stated.

Here it was said he gave eight Pounds for the Surrender of it, and also that he sold it; therefore it must be beneficial.

Next, whether this Residence, as stated, is sufficient? 'Tis not necessary to live upon the Estate, if he resides at any Place in the Parish.

Chief Justice: In the Case of *Eversley* against *Blackwater*, the Court were of Opinion, that a Child might be sent to the Settlement of his Father, though it had never been there before, contrary to an Opinion of Lord *Parker* in a former Case. The true Distinction I think is, that where Children have gained no Settlement, but continue Part of their Father's Family, they shall follow their Father's Settlement; and so held in St. *Michael* in *Norwich*, against St. *Matthews* in *Ipswich*.

Mr. *Gundry:* The Father neither had such Estate, nor resided so as to gain a Settlement.

It is not said what Estate he had, nor how he came by it.

In *Heaver* against *Sundridge* it appeared there was a Lease for ninety-nine Years, and thirty Years Possession under it, and that his Father had charged it with twenty Pounds; all which shewed it beneficial.

In this Case the Tenant paid him eight Pounds for the Surrender, not he paid the Tenant.

Bare Residence without an Intent to settle, will not be sufficient, for he might come as a Guest; he never was absent from his old Settlement forty Days, so that he had not departed from it.

Though he had a Right to settle there, yet it does not follow that he did gain a Settlement.

This might oblige Persons to gain Settlements when they did not design it.

This is not such a Person as is described in the Statute of *Car.* 2.

Lord *Chief Justice: Quære,* Whether his Interest in the Estate be such as can be considered to be his own Estate, or a Rack-renter.

It should have appeared how he came to this Estate, whether as Executor, etc. If it was his own, no matter how small the Rent is.

By this State I should think it a beneficial Lease, though it is a little uncertain, for it is called his own Estate, and his Tenant gave him eight Pounds to quit it, etc. no Reason to look upon it as a new Purchase.

It is agreed the Residence is not necessary to be forty Days *successively.* It is stated that he intended to make *Sidberry* his Home and Habitation, and that he managed his Estate then; that he sometimes went to *Souton,* and at other Times to other Places, as his Occasions required. Residence for forty Days in any Parish, where they cannot by Law remove him, gains a Settlement, and so held by the whole Court in *Edgeworth* against *Harrow, Easter* 12 *Ann.*

No Difference whether in his own House or in an Alehouse, if he cannot be sent away; therefore I am of Opinion that the Estate is sufficient, and the Residence good in *Sidberry,* and that the Order of Sessions settling him at *Souton* must be quashed.

All the Court agreed with the Chief Justice, and the Order was quashed.

Trinity, Twelfth and Thirteenth of *George* the Second.

The King *against* The Inhabitants of East Bidyford.

ORDER specially stated, that the Widow of a Master of an Apprentice, without taking Administration to her Husband, or being Executrix took upon her to assign over an Apprentice; and it was objected, that she had no legal Interest, and that the Assignment was void.

Answer. An Executor *de son Tort* may do all legal Acts, and it is admitted an actual Executor may assign even by Parol, *Salk.* 68. The King against *Barnes* in this Court, *Easter* 3 *Geo.* 1. an Executor *de facto* is intitled to the Wages of an Apprentice.

If there was no Executor, then he was *sui Juris,* and his living as an hired Servant three Years and an Half gains a Settlement.

Mr. *Solicitor General on the other Side,* agreed that an Assignment by Executor was good, and that even by Parol.

It is not stated that she was Executor *de son Tort,* and the Court will not presume it; because it is a wrongful Act.

While the Indenture continues, he cannot hire himself; besides it is not said that the Man that hired him was a settled Inhabitant.

It was held by the Court, that there being the Consent of all Parties interested, and an Inhabitancy under it, though no regular legal Assignment, yet was sufficient to gain a Settlement, and confirmed the Order.

Easter Tenth of *George* the Second.

The King *against* The Overseers of the Poor of the Manor of Grafton in the County of Worcester.

TWO Justices made an Order to remove *Eliz. Laughter*, a single Woman, from the Parish of *Stoke Prior* to the Manor of *Grafton*, which they adjudge to be the last Place of her legal Settlement, where she lived for a Year with *Daniel Hobworthby*, with whom she lived five Years and upwards.

From this Order an Appeal was made to the Sessions, who confirm the Order of two Justices, but state the Matter specially, That the Manor of *Grafton* is an extraparochial Place in the said County, and formerly a Seat of the Earls of *Shrewsbury*, then consisting of a Capital Messuage, and three Keepers Lodges in the Park adjoining, and that the Park is since converted into Farms, and there are now five dwelling Houses and Farms within the said Manor, including the said Old Lodges, and now occupied by five several Tenants; that the Pauper was hired for a Year, and served a Year within the said Manor, and hath not since gained any Settlement elsewhere, and being likely to become chargeable to the Parish of *Stoke Prior*, the said two Justices, upon Complaint thereof, etc. did on the tenth Day of *August* last, by an Instrument in Writing under their Hands and Seals, appoint *John Webb*, Gent. an Inhabitant within the said Manor, Overseer of the Poor within the said Manor, and that the Pauper was removed to him by, etc. and that there never was any Overseer of the Poor or other Officer within the said Manor, till the said *John Webb* was appointed as aforesaid, or any poor Person within the Memory of Man, removed to or from the said Manor; and it being the Opinion of the Court that the said Manor is now a Village, and that the Inhabitants thereof ought to maintain their own Poor; this Court, etc. confirms the Order of the two Justices, etc.

Mr. Serjeant *Hawkins* moved to quash the Order of two Justices, and the Order of Sessions confirming it; because this was not a Town or Village to which poor Persons could be sent.

That a Vill according to the first *Inst.* 115, must consist *de Pluribus Mansionibus;* 1 *Mod.* 78. having a Constable or Tithingman denotes a Vill.

Finch's Law 80. a Town is a Precinct, antiently of ten Families, called Tithings, in one of which, etc. and a Rule was made to shew Cause, which was afterwards made absolute.

Easter, Thirteenth of King *George.*

The King *against* Parish of———

THE Defendant was indicted for exercising a Trade for a Month, not having served seven Years to it as an Apprentice; and moved to quash it on these Exceptions; First, it does not appear in the Indictment in what County *Boston* mentioned in the Body of the Indictment is; this was supported by the Authority of the Case of the King against *Deerling:* and the Court seemed to think the Exception was good. It neither appears by the Caption of the Indictment, nor in the Body of it; the Exception was held good; *Trin.* 8 *George*, the King against the Inhabitants of *Sherringham;* and in *Mich.* 11 *George*, the King against *Austin; Mich.* 12 *George*, the King against the Inhabitants of *Adelthorpe*, 2 *Keb.* 582. in *Cro. Jam. Leech's* Case, Error of an Outlawry in an Indictment of Perjury, laid of the Parish of *Aldgate*, was reversed, though *Middlesex* was in the Margin, yet the Court would not *intend* it was in *Middlesex.*

For the Indictment it was said, that the Borough of *Boston* in the County of *Lincoln*, is laid in the Side of the Indictment, and the Jury *have found* that he exercised the Trade in the Borough aforesaid, so that will relate to this in the Margin, and then the Indictment will be good. But the Court thought it too strained a Relative, for if it was removed by *Certiorari*, no Venue appears where to try it, if the Place is not expressed in the Body of the Indictment in what County it is.

2. It does not appear from what Time the Computation of the Month, in which he is charged to have illegally exercised the Trade, began.

3. It is said he exercised the Trade for his Gain; not allowed.

4. The Indictment says he exercised the Art or Mystery, within this Kingdom of *England.*

This Indictment being founded on the 5th of *Eliz.* therefore the Words *within this Kingdom of England*, relate to the Time when she reigned, and now there is no such Kingdom, which is laying it wrong. So held *Trin.* 9 *Geo.* the King against *Hogg.* The Court agreed The *First* Exception, and held that the Word *aforesaid* should not be taken to relate to the Borough of *Boston* in the County of *Lincoln* in the Margin, and quashed the Indictment.

Easter, Eleventh of King *George.*

The King *against* Weston and others.

SIX Defendants were indicted for exercising the Trade of Woolen-Drapers, not having served seven Years Apprenticeship to the Trade, contrary to the Statute of 5 *Eliz.* The Indictment was quashed upon Motion; because several Persons were indicted jointly for an Offence, which of Necessity must be several. So is *Ro. Abr.* Tit. *Indictment* 81. 1 *Vent.* 302. *Salk.* 382. where a Jury is to be fined, the Fine must be imposed jointly, and not severally. *Trials per Pais.* So an Indictment against several, that they and each of them did use such a Trade, is ill; because the using a Trade by one, is not the using a Trade by another. So a joint *Mandamus* to restore nine Persons, having several Offices and Interests was quashed, for the Parties ought to have several Writs.

The same Term.

The King *against* Deerling.

THE Defendant was indicted on the Statute 5 *Eliz.* for exercising the Trade of a Linen-Draper, not having served seven Years Apprenticeship. The Indictment set forth, that the sixth of *September* in the eleventh Year of his present Majesty, and continually afterwards until the Seventh of *October* last past, the Defendant exercised the Trade of, etc. contrary, etc. The Indictment was quashed on these Exceptions.

First Exception; It is said to be found at the General Sessions, whereas it should have been at the General Quarter-Sessions.

Second Exception; It does not appear in what County *Chichester* is, where the Indictment was found, otherwise than in the Margin.

By the Court: This is a very fatal Exception.

Third Exception; The Indictment was found on *Thursday* after the Feast of St. *Michael*, and *Michaelmas* Day was upon *Tuesday* the twenty-ninth of *September*, and the *Thursday* following was the first Day of *October*, and the Month does not expire till the seventh of *October*, which is subsequent to the finding of the Indictment.

N. B. The Exception, that the Indictment does not aver that it was a Trade at the Time of making the Statute, hath been often over-ruled.

Michaelmas, Twelfth of *George.*

The King *against* Hawkins.

THE Defendant was indicted for exercising a Trade from the 10th of *November* till the middle of *January* following, and found against him only for a Month. An Exception was taken in Arrest of Judgment, that it should have found him guilty of exercising the Trade for the whole Time; but the Court held the Indictment was sufficient, for they might punish him for a Month, and remit the Residue.

2. The Indictment charges that he exercised the Trade *de les* Linen-Draper, which is a Compound of *French* and *Latin*, and *English*, and it ought to be all in *Latin;* but held good; an Indictment for using the Trade *de le Fabre* was quashed.

Hilary, Twelfth of *George.*

The King *against* Brotherton.

MR. *Fazakerly* took an Exception to an Indictment for exercising the Trade of a *Butcher* on a *Sunday*, but the Indictment did not conclude, contrary to the Form of the Statute, *Whereas* it is no Offence at Common Law; but the Court would not quash it, because it was an Offence of too high a Nature, and left the Defendant to demur to it, if he thought fit, 1 *Saund.* 249. *Faulkner's* Case is express in Point. He was indicted for keeping a Tipling-House, without the Licence of two Justices of the Peace, and that Indictment concluded as this did at Common Law, *Whereas* it is no Offence at Common Law, but is made an Offence by the Statute of *Edw.* 6. *c.* 1. and for this Reason that Indictment was quashed.

Hilary, Second of *George* the Second.

The King *against* Pensax.

THE Defendant was indicted on the Statute 1 *Jam.* 1. *c.* 17. and the Indictment recited the Statute whereby it is enacted, that no Person shall make, or cause to be made, any Felt or Hat, unless he shall have first served an Apprenticeship in the said Trade of Felt-making during the Space of seven Years at the least, upon pain to forfeit five Pounds for every Month he shall continue so offending, but that the Defendant did for eleven Months make Hats, not having served as an Apprentice to the said Trade of a Felt-maker, contrary to the Form of the Statute.

Mr. *Bicknall* moved to quash this Indictment, because the Statute gives a particular Remedy by Bill, Plaint or Information, to recover the Penalties mentioned in the Statute, and this being no Offence at Common Law, is not indictable, for it is an Offence of a new Creation, and the Method, by which the Statute orders it shall be punished, must be pursued; and the Indictment was quashed.

Michaelmas, Eleventh of *George* the Second.

The Parish of Kinley *against* Hansworth.

CASE stated, that *George White*, the Father of the Pauper, removed about forty-five Years ago, married a Widow whose first Husband, by Leave of the Lord of the Manor, built a Cottage, and paid one Shilling and three Pence Rent, that *J. White* lived there on his Father's Death, which was about three Years ago; and it was insisted such Cottager so living gained a good Settlement.

Mr. *Wyrley on the same Side:* That the Father of the Pauper lived forty-five Years ago in it. Antiently Commorancy alone was sufficient to gain a Settlement. Justices cannot remove any Person from his Habitation. 6 *Mod.* 416.

Exceptions to the original Order, that the County was not mentioned, but it appeared to be to the Church-wardens and Overseers of *Kinley* in the County of *Stafford*, and to the Church-wardens of *Hansworth* in the said County, not under Seal.

Mr. Serjeant *Hayward on the other Side:* Here was no Interest, but a bare Possession at the Will of the Lord, removable at Pleasure.

Chief Justice: The Removal being of Pauper and Family, is ill in the original Order.

Note; They were all mentioned, and their Ages, as chargeable, and adjudge the Settlement of *John White* and his Family to be in *Kinley.*

Chief Justice: On this State it does not appear by what Right the Pauper removed, entered, whether as Heir, whether as eldest Son or not.

Mr. Justice *Probyn:* Nothing is returned sufficiently certain for the Court to judge on; original Order and all quashed.

Michaelmas, First of *George* the Second.

The King *against* Lister.

THE Defendant was indicted upon the Statute 5 *Eliz. c.* 4. for exercising the Trade of a Dry Salter, and the Indictment set forth, that the Defendant did use and exercise the Craft, Mystery, or Occupation of a Dry Salter, being a Craft, Mystery or Occupation used in this Kingdom on the twelfth Day of *January* in the 5th Year of the Reign of our late Sovereign Lady *Elizabeth*, etc.

To this Indictment two Exceptions were taken.

First Exception; That it was not a Trade within the Statute.

Second Exception; The Indictment was wrong for averring this to be a Trade in this Kingdom in the Time of Queen *Elizabeth;* for since the Union this Kingdom hath been called *Great Britain*, and is quite a distinct Kingdom from what *England* and *Wales* were in the Time of Queen *Elizabeth;* the Words *in this Kingdom* tie down the Indictment to the Kingdom of *Great Britain*, as it is at this very Day, and at the Time of making the Statute of 5 *Eliz.* there was no such Kingdom, so that it is a manifest Contradiction to aver, that this was a Trade exercised in this Kingdom of *Great Britain* at the Time of the Statute, for at that Time there was no such Kingdom in Being. The King against *Hogg*, *Trin.* the 9th of *Geo.* 1. the King against *Parish*, *Trinity*, 13 *Geo.* 1.

As to the First Exception, the Court over-ruled it, and held this to be a Trade within the Statute. 1 *Lev.* 343. 1 *Syd.* 367. 2 *Keb.* 582. 2 *Salk.* 611.

But the second Exception was held clearly to be good, and the Court quashed the Indictment upon it.

N. B. The proper way of laying these Indictments is to aver that it was a Trade used in *England*, or in *England* and *Wales* in the Time of Queen *Elizabeth*, etc.

Hilary, Ninth of *George* the Second.

The King *against* Jenkins.

MR. Serjeant *Hussey* moved to quash an Order of two Justices wherein they adjudge that *A.* is not the putative Father of a Bastard Child, and therefore they discharge him. Now it was insisted that the Justices have not any Authority to make this Order, not being for Relief of the Parish, and cited 1 *Vent.* 59. *Cro. Car.* 341, 350, 470.

Mr. *Marsh* on the other Side said, As to the first Exception, that it is not for the Relief of a Parish, the Court hath held it well enough. No Appeal lies from this Order to Sessions, by 3 *Car.* 1. an original Jurisdiction is given to the Sessions.

That the Justices at Sessions and out of Sessions have the same Power, and therefore why may not Justices do the same Acts as in Sessions. This being a new Case was adjourned.

Afterwards, in *Trinity* Term following, the Chief Justice gave Judgment as follows.

This was an Order of Bastardy made by two Justices of *Kent;* the Order sets forth a Complaint made by two Church-wardens, that *Mary Pritchell* was delivered of a Bastard Child, and had charged the Defendant with being the Father; We, etc. having considered and heard on Oath the Proof of both Sides, do adjudge him not to be the Father.

Objected, that Justices of the Peace cannot make this Order of Discharge, and we are all of Opinion that two Justices have no such Authority; for the whole Power depends on the Statute of the 18th of *Eliz.* to take Order for Punishment, and for Relief of the Parish; the Power is not a Power of Judicature or Conviction, but only to proceed by way of Order; ever since the Statute this has always been held an Authority to make Orders; they have always been in *English.* No Evidence set out, nor appears that the Party was summoned; the Question then is, Whether any Words are to authorize such Order as this? for this is not for Punishment of Parties or Relief of the Parish.

Objected, that Sessions might discharge, if this had been an original Application to the

Sessions, but on Examination this will not hold. *Cro. Car.* 470. *Slaughter's* Case. *Cro. Car.* 341, 350, 351.

Mich. 13th *Geo.* 1. Order made by two Justices, and Appeal, and discharged at Sessions; and two other Justices made a subsequent Order and held ill; but in all these Cases the Final Order was made at the Quarter-Sessions; for it would be absurd to say that this is subject to the Quarter-Sessions, that two Justices should make a subsequent contradictory Order, for then there would be no End. But this Reasoning is not applicable to two Justices; and besides to say that they may make an Order of Discharge, for the Parish cannot appeal, for that is only when the Party refuses to give Security to come to Sessions. It was also said that equal Inconveniences are on both Sides; but if that be so, all that we can do is to let the Rule of Law take Place. The same may be done in Cases of Removal, or Suppressing of Alehouses, where if two Justices refuse to make Orders, two others may; therefore let the Rule to quash the Order of the two Justices be made absolute.

The same Term.

The King *against* The Inhabitants of St. Nicholas Ipswich.

INDENTURE of Apprenticeship for four Years, which was insisted was a good Settlement, and cited *Salk.* 533. St. *Bride's* and St. *Saviour's.*

Chief Justice: That Case was not determined, the Words of the 5th of *Eliz.* are extreamly general.

Mr. Justice *Lee:* If this can be considered as a void Indenture, then Inhabitation makes no Settlement.

Chief Justice: There being an Indenture in Fact, it will be material if you can shew the Statute of *W.* 3. has varied it. Adjourned.

In *Mich.* Term following, this Order of Settlement was moved again to be quashed, and thus stated, That *James Blythe* was removed from St. *Nicholas's* in *Ipswich* to St. *Peter's* in the same Place; St. *Peter's* appeal to the Quarter-Sessions of the Borough, and states that the Pauper being of sixteen Years of Age on the 24th of *December* 1726, was bound Apprentice to *A. B.* Cordwainer, for four Years only, in St. *Peter's*, and served it accordingly, and lived with the Master in the same Parish, and the Sessions held this no Settlement.

It was insisted to quash the Order, for that there was a particular Clause for Towns Corporate, and that they were not within the other Clauses in the Statute, for this appears to be a Binding in a Town Corporate.

At the Time of making this Statute there was no Provision for the Poor; but the Chief Justice said that was a Mistake, for there were Acts in *Ed.* 6. etc. for the Poor, though not now printed.

Salk. 533, must be considered as a Case in Point, and must be taken that that Exception was over-ruled.

But the Court thought that this Exception was not then taken.

Lord *Chief Justice* said, There was no Case where this Exception was ever taken, whether an Apprentice bound, etc. gains a Settlement? I am of Opinion he does; the Words in the Statute of the 5th of *Eliz. c.* 4. §. 26. are very strong; there are many Regulations as to Persons taking or being bound Apprentice; then follows §. 41. that such Indentures, etc. are void to all Intents and Purposes.

1. *Quære,* Whether this Clause extends to all Sections?

2. *Quære,* Whether this Indenture be void or voidable only?

As to the first, this extends to all.

2. This only makes it voidable if Parties take Advantage of it, and many Cases are like this.

Statute *W.* 2. As to Fines of Tenants in Tail, yet held that only takes away the Entry, and makes it voidable.

Hob. 166. Several Cases to that Purpose, and mentions in particular the Case of Sheriffs Bonds; to which Defendant cannot plead *Non est factum,* but must plead the special Matter; in the present Case the Parties of each Side have performed it, and neither

of them have taken Advantage of it to avoid it; and it would be very hard to make this no Settlement. 1 *Salk.* 68. *Mod. Cases* 69.

It is said that the Court would take him to be an Apprentice *de facto*, and if this Construction, so strict as contended for here, had been held then, Lord Chief Justice *Holt* could not have given that Resolution; therefore he thought this only voidable; besides this would be extended to all the Qualifications mentioned, as well as the Time, therefore it would be very mischievous to hold it otherwise.

Statute 3 *W.* 3. As to Notice, that receives the same Answer, as to the Validity of the Binding.

Besides, the Notion of Settlements is greatly altered since this Statute, 27 *H.* 8. *c.* 25. in *Rastall's Statutes;* Settlement gained by dwelling three Years.

As to the Case of *Cuerden* against *Laland*, for Non-payment of the Stamp-Duty; this is materially different, for these Words are added, and not available in any Court or Place, or to any Purpose whatsoever, and shall not be given in Evidence unless Oath be made that the Sums were really paid.

Orders may as well be quashed for admitting illegal Evidence, as was done, where the Sessions admitted a Wife to prove Bastardy, therefore he thought this a good Settlement, and that the Order of Sessions should be quashed, and the first Order confirmed.

Mr. Justice *Page* of the same Opinion, that this is only voidable, like as where it is said in the Statute, that Persons shall be *ipso facto* excommunicated, yet there must be a Sentence for that Purpose, and it would be very mischievous to hold the contrary.

Mr. Justice *Probyn:* If the Words of this Statute were to be pursued, there would be no Apprentice could gain a Settlement; therefore if any Construction can be put on it, to avoid these Inconveniences, it is proper it should be. In Husbandry one may be bound from 18 to 21, and it is not here found that he was bound to him as a Trader, and he may be bound in Husbandry. The naming the Master Cordwainer does not imply that he was bound to that Trade, and if bound in Husbandry then the Exception does not extend to it; but if this be too refined a Construction, yet many Statutes declare Facts void, and yet are only held voidable; here both Parties have complied with it, and none can avoid it but the Parties; thought it would be the hardest Case in the World to say this is no Settlement, and thought this only voidable. Suppose one bound Clerk to an Attorney, surely that would be a good Settlement.

Mr. Justice *Lee:* 'Tis a known Distinction between void and voidable in judicial Acts; the Case of the Sheriffs is similar to this, nay it is a stronger Case than this, for there the Form of the Statute is set out; therefore on the Authority of those Cases in *Hob.* 166. thought it a reasonable Construction to make this only voidable, and if that be so, then this is clearly a Settlement; this differs from the Case on the Stamp Act, and a Rule was made for quashing the Order of Sessions and confirming the Order of the two Justices.

Hilary, Eighth of *George* the Second.

Cheping Wycombe Parish *against* New Windsor.

MR. *Proctor* moved to quash an Order of Sessions confirming that of two Justices, but specially stated for the Opinion of the Court.

The Case was, that *Diana Brooks* the Pauper, was sent by Order of two Justices, from *Cheping Wycombe* to *New Windsor*, as the last Place of her Settlement; *Windsor* appealed to the Sessions, and the Order was confirmed, stating that the said *Diana Brooks* had hired herself to live with one Colonel *Merrick* at *Thorp* in *Surrey*, to go a Month on liking at five Pounds a Year Wages, but to part on a Month's Wages or a Month's Warning on either Side; she continued under this Agreement a Year and three Quarters in this Service, and her Wages were paid Quarterly.

It was insisted, that on the State of this Case, here was a Hiring and Service for a Year, and that consequently she had gained a new Settlement at *Thorp*, and was ill removed to *Windsor;* and a Rule was made to shew Cause; afterwards the Court quashed the Order adjudging a good Settlement at *Thorp*.

Easter, Eighth of *George* the Second.

Tedford *against* Waddington in Lincolnshire.

THE 6th of *May* 1734, two Justices make an Order to remove to *Tedford*, an Appeal received, and adjourned to *Mich.* Sessions, who state specially, That *Francis Gill* was settled at *Tedford*, and contracted for a House in *Waddington*, with one *Atkinson* for thirty-nine Pounds; that *Gill* paid nine Pounds, and *Isaac Bristow*, by Order of him, paid for him thirty Pounds, and was conveyed to him and his Heirs. The Conveyance was dated the 2d of *May* 1730, but not executed till the 19th; on the 18th of *June Gill* demised to *Bristow* for one thousand Years defeazible on Payment of the Money in a Year after the Date; that *Gill* continued in Possession for four Years, when *Bristow* entered upon him, and then *Gill* released the Equity of Redemption; and the Justices adjudge this a fraudulent Conveyance.

It was insisted, that the Justices were sole Judges of Fraud, and that the Order was good, and that the Order of Sessions should be confirmed. It was objected to the Order of Sessions, that the Justices have stated the Premisses, and totally departed from them in the Conclusion; for at first this seems to be on the Statute of the 9th of *Geo.* 1. and where the Consideration exceeds thirty Pounds, that is not a Case within the Statute, for it only relates to Purchasors, where the Consideration is not above thirty Pounds.

It might very reasonably be taken that *Bristow* was indebted to *Gill*, because it is said this was paid by the Order of *Gill*; it is stated that this was agreed on both Sides to be the State of the Case; this was referred to Judges of Assize, who not having Time to hear it, Sessions after take upon them to adjudge the Purchase fraudulent, but adjudge that *Thetford* was no way concerned in the Fraud.

The Question does not turn upon the Fraud, but now must be considered on the State of the Case only.

To which it was answered, that as to the Order of Sessions, if the Justices are proper Judges of Fraud, this is sufficient, and so has been held in taking of Estates.

Indeed they have not adjudged any thing about the Money, but they have gone further, and adjudged the Purchase itself fraudulent, and it is said on hearing further Evidence on both Sides; when an Appeal is adjourned, new Matter might arise at another Sessions.

Chief Justice: The Question on the Merits of the Case is,

1. Whether it is a Case on the Statute of the 9th of *Geo.* 1.

2. Whether the Justices could adjudge on this Case, supposing it out of the Act of Parliament; and I think it is not within that Act at all, for that is where it is under thirty Pounds *bona fide* paid; then was this *bona fide* paid? I think on this Act of Parliament it was *bona fide* paid to the Vendor by the Purchasor.

Suppose a Man makes a Mortgage, and lives in such an Estate for twenty Years, would it not be a strained Construction to say he might be removed from that Parish, and was not settled there?

3. Whether without the Aid of this Act the Justices could examine into this, and adjudge the Fraud? I think they may; here the Justices have stated the whole of the Fact; if they had only adjudged it a Fraud without stating the Fact, the Court could not have taken Notice of it; but when they state it so, the Court may. It is stated *Gill* lived four Years in this Estate, etc. they say besides that upon hearing further Evidence; but I think the more natural Construction of that is, that they heard further Evidence of the same Case, upon those special Facts. The Sessions can only inquire how far the Purchase was fraudulent, so as to charge the Parish, but not as between Party and Party; for otherwise Justices would take upon them to be a Court of Chancery. The Man's paying thirty-nine Pounds, and living four Years, seems to me to be a clear Settlement, and that here was no Fraud, and the Facts stated do not warrant the Conclusion, and both Parties, 'tis stated, admitted the Case to be true.

Mr. Justice *Page:* The proper Jurisdiction of the Justices generally is to inquire of Fraud; if Mr. *Bristow* had been auxiliary to any Fraud, and that had appeared, it would have been a proper Order; but on this Case specially stated here appears to be none, and therefore of

the same Opinion; and we must take the Case stated to be the whole of the Fact, and the hearing farther Evidence can in this Case have relation only to the special Case stated.

Mr. Justice *Probyn:* Upon this Order they admitted the Case so far as referred to the Judge of Assize, but after, upon further Evidence, they adjudge it a Fraud, which must be understood to be a fraudulent Purchase as between the Parishes.

So far as the Case goes, I am of Opinion there is no Fraud, and on that *Gill* gained a good Settlement; but whether, the Parish not being Party to the Fraud, it can be taken to be determined on that, but on the special State; but then this was not to determine the whole Case, but such Part only as the Justices wanted the Information of the Judges of Assize on; observed on the Words *upon hearing of further Evidence*, that it could not be intended to be on the Case agreed.

Mr. Justice *Lee:* If the State of the Case returned be not the whole of the Case, the Orders are right, but that Case is generally taken to be the whole, and then there is no Fraud; and it is proper for this Court to determine whether the Justices have made a proper Judgment.

I should think this must be taken upon the Return to be the whole Case, and that they have made a Conclusion not warranted by the Premisses. This is a Case not within the Statute of the 9th of King *George* the first; the Payment is the Matter about which the Act treats (*viz.* thirty Pounds); in this Case the thirty-nine Pounds was *bona fide* paid to the Vendor. By the Statute 13 and 14 *Car.* 2. a Man has been held not to be removable from a Tenement of his own under ten Pounds a Year.

There the Man lived four Years after the Mortgage, etc. he has been, during that time, removed; supposing he only paid nine Pounds of his own Money, and borrowed thirty Pounds; agreed with the Chief Justice.

Lord *Chief Justice:* All the Court agree that if this be taken to be the whole of the Case, these Orders are wrong; as to the further Evidence, whether that may not be the Entry of the Clerk of the Peace; no certain Form is required; in this Case the Reference to the Judges of Assize was impertinent, if it was not the whole of the Case; suppose the Justices did hear further Evidence, yet I believe not upon new Fact, and this seems to be the proper way that it should be understood.

Mr. Justice *Probyn:* I have known a Fact stated to a Judge of Assize, and the Justices have reserved the Consideration to themselves; but the Question is whether they might not determine the Fraud upon some further Evidence of the same Fraud?

It was adjourned for further Consideration.

It was objected, that the Sessions was adjourned, but not the Appeal, whereby that was fallen to the Ground, therefore prayed a Rule to shew Cause, why the Return should not be amended; which the Court granted.

Afterwards, in *Trinity* Term following, the Orders were quashed.

The same Term.

The King *against* Cust.

MR. *Place* moved to quash an Order of four Justices for discharging an Apprentice bound to the Defendant a Surgeon, on two Exceptions.

First Exception; That the Sessions has no original Jurisdiction; but this was not allowed.

Second Exception; That a Surgeon is not one of the Trades mentioned in the Statute, and cited the King against *Gately*.

The Court thought that Case had been over-ruled; then it was said it was in the Case of the King against *Collingwood*, and the Court granted a Rule to shew Cause.

Another Exception was taken in the above Case, That by the Statute the four Justices ought to set forth their Reason for which they discharged the Apprentice, and the Adjudication was general. It appeared in the Order, that the Complaint was that the Master did not instruct the Apprentice in his Trade, but put him to improper Imployments, and used him cruelly; afterwards the Court thought the Order good, for that the Act to be done was to be by four Justices at the Court called the Sessions; as to the Reason, they have said that it

appears to them that the Master has misused, etc. and that in Orders it has been held that the Words *that it appears* have been held a Judgment; and the Order was affirmed by the whole Court.

Trinity Term following.

The King *against* The Inhabitants of Sandwich.

SPECIAL Order; the short State of the Case on which the Point was whether the Pauper who had rented a Tenement of thirty Shillings a Year in ——— for two Years, and then took a Parcel of Land of twelve Pounds a Year, and occupied that, and continued in Possession of the former Tenement during that Time, and there lived, had gained a Settlement in the Parish where the Tenement was. The Justices at Sessions were of Opinion that this did not gain a Settlement.

To quash this Order the following Cases were cited, *Mich.* 1 *Geo.* 1. *North Nibley* against *Wooton Underedge*, the King against the Inhabitants of *Hollyburn*, *Trinity* 3 *Geo.* 2. *South Sidenham* against *Lamerton; Dumbleton* against *Sedgeborough*. Upon which a Rule was made to shew Cause why the said Order should not be quashed.

Afterwards, on shewing Cause, a Distinction was endeavoured between the present Case and those cited, by saying that though the Court had allowed a Tenement extending itself into two Parishes to make a Settlement in the Parish where the House stood, and the Pauper lived, yet it ought to be upon one intire taking.

But *by the Court:* The Statute does seem to intend that it should be one Renting, but the Construction which has been put has been on different Takings, and upon this Reason that a Person of Ability to take ten Pounds a Year takes off the Presumption of his being likely to become chargeable; and the Orders were quashed.

Hilary, Ninth of *George* the Second.

The King *against* The Inhabitants of the Township of Bramley in the Borough of Leeds in the West Riding of Yorkshire.

TWO Justices make an Order to remove *J. Close*, etc. from *Armley*, another Township in the same Borough, to *Bramley*, who appeal, and the Sessions confirm the Order and state specially, that the said *John Close*, after his Settlement in *Bramley*, removed with his Family, and inhabited and farmed Lands at *Armley*, for which he was charged, and paid Two quarterly Payments to the Land-Tax only.

It was moved to quash these Judgments, and said it had been determined, that paying to the Land-Tax in the Case of a Tide-waiter, who was allowed it again, gained a Settlement. *Oakhampton* against *Kentown*, *Easter* 7 *Geo.* 2. *Comb.* 410. and 4 *Mod.* 331.

Mr. *Wilson*, on shewing Cause, insisted this was a Yearly Tax, and the Payment of two Quarters not sufficient.

But *by the Court:* It is a good Settlement; and the Orders were quashed.

Michaelmas, Second of *George* the Second.

The King *against* Anne Upton.

THE Defendant was indicted for Usury on the Statute of 13 *Eliz. c.* 8. and a Motion being made in Arrest of Judgment, it appeared the Corrupt Agreement was fully set out; but it was not said the Money ever was lent in Pursuance of that Agreement, so the Agreement, though corrupt, not being carried into Execution, of Consequence there could not be any Usury; and Judgment was arrested.

Note; by the Statute the Money must be received to create the Offence, but the corrupt Agreement avoids the Debt; and in *Salk.* 680. it is said that the Justices have not a Jurisdiction on the Statute of Usury.

Hilary, Third of *George* the Second.

The King *against* Cooper.

MR. *Lacey* moved to quash an Indictment for Usury found against the Defendant on this Exception, That an Indictment did not lie in this Case; for the Statute 12 *Anne* directs that treble Damages shall be recovered against the Offender by original Bill, Plaint, etc. in any of her Majesty's Courts of Record, but there is no Mention made in the Statute of proceeding against the Party offending by way of Indictment, and this Fact of Usury becomes an Offence from the making of the Statute which creates it an Offence; nor is the Defendant liable to any other Penalty or Prosecution than what the Statute directs; the King against *Smith*, *Salk.* 680. the Judgment was reversed on an Indictment for Usury, for taking more Interest than was allowed by the Statute of *Car.* 2. and the Statute 12 *Anne* is the very same with that of *Car.* 2. only the one provides against taking more than six Pounds *per Cent.* the other five Pounds; and a Rule was made to shew Cause, and the last Day of the Term the Rule was made absolute to quash it, no Cause being shewn.

Trinity, the Sixteenth of *George* the Second.

Hilton *against* Lidlish.

ORDER of Removal of an Infant Child to *Hilton*, and on Appeal in 1740, the Sessions confirm it, and state specially,

That the Pauper *Hannah Beaumont* was a Bastard of *Mary Beaumont*, and that the Mother lived with her Father in Law in *Lidlish*, and was removed in 1734 to *Hilton*, who received her, and gave her a Certificate; upon which she went back to *Lidlish*, where she was delivered of the Pauper *Hannah Beaumont* a Bastard, in 1735.

Court: This Case depends intirely upon the Statute of the 8 and 9 of *W.* 3. *c.* 30. §. 1. the Intent of which was for the Publick Benefit; it takes Notice of Families, and the Question turns upon this, Who are the Family? the Law has had no Consideration of a Bastard, and there is no Case where Bastards are considered as Children. In the Case of *New Windsor*, *John Piercy* and the Woman with whom he lived, and by whom he had several Children, were certified as Man and Wife, and therefore the Court held the Parish was concluded from saying the contrary; and in that Case the Court declared that illegitimate Children were not within the Act, but that the Parish was estopped by the Certificate. Bastards are settled at the Place of their Birth, and never considered as Children; the Statute does not extend to Bastards, therefore both the Orders must be quashed.

Easter, Eighth of *George* the Second.

Dalham *against* Denham Parish.

ORDER of Removal of one *Walker* and his Wife from *Dalham* to *Denham* who appeal, and the Sessions state specially, that *Walker* from 1725 to 1730 rented a Farm in *Denham*, and after rented 150*l.* at *Southwood* an extraparochial Place, and that *Southwood* contained more Houses than One, *viz.* Two.

Objected, that the Sessions by confirming this Order had mistaken the Place of Settlement, a plain one appearing on the State of the Case in *Southwood*. *Dolting* against *Stokelane*, the King against the Inhabitants of *Rufford*.

On shewing Cause it was insisted, that these Orders were good, and that *Southwood* having no Officers could not receive this poor Person.

Held in the Case of *Brucum Lodge*, that an extraparochial Place must consist of several Houses to make a Vill. The King against the Inhabitants of *Belvoir*, *Hil.* 2 *Geo.* 2.

There were two Houses, the Seat and Castle of the Duke of *Rutland*, and an Alehouse, and held not a Vill; so here it is neither a Hamlet or Vill.

According to the Statute of 13 and 14 *Car.* 2. and *Finch's Law* 80. a Vill or Township

must have ten Houses, 1 *Mod.* 78. 1 *Inst.* 115. though a Vill need not now consist of ten Houses, for it may be a Vill though the Houses are demolished.

It was answered, that as to their not having Officers, that is their own Fault, and they shall have no Benefit from their own Neglect. As to the Case of *Belvoir Castle*, it is material to see how that Case is, and that Alehouse might be only an Out-house belonging to that single House.

N. B. Upon reading the Order it was said that there was only one Person who kept an Alehouse besides, which the Court said must now be intended another Inhabitant; but this Case was never debated, but the Rule made absolute without Defence, therefore no Authority. If a Town be decayed, yet it is a Town still. As to 1 *Mod.* 78. Chief Justice *Hale* changed his Opinion; *Mod.* 277, 251. the Case of *Dolting* is express, that may be removed to extra-parochial Place where are more Houses than one.

There was a plain Exception to the Case of *Belvoir Castle*, because it was directed to the Overseers of *Belvoir*, when it appears on the Face of the Order there were no Overseers.

Lord *Chief Justice:* This is a new Case to me upon the Circumstances of it as stated; till the Case of *Stocklane*, it was thought a Removal to an extraparochial Place could not be; but there it was resolved it did extend to them; if it could come under the Denomination of a Township or Vill, which was a pretty large Construction; for the natural one seems to be, that Justices might appoint Officers in large Townships or Villages.

The Words of Lord *Parker* were, That Overseers might be in every Parochial Place where there were more Houses than one, so as to come under the Denomination of a Township or Vill, which are the Words on which the Court grounded their Opinion; and though they laid down the Rule in that Case, yet they quashed the Order, because *Brucum Lodge* did not appear to be a Place that came under that Denomination; it is difficult to determine what is a Vill; but here could not be Officers annually chosen, it is called *Southwood Park*, and but two Houses; and not a Place to which a Person could be removed. Mr. Justice *Page* agreed.

Mr. Justice *Probyn:* The old Law shews what a Tything was; can a Vill be less than a Tything? There must be many Inhabitants; the Words *more Houses than one* must be so as to make it a Vill; inclined to think there must not be less than ten Houses to make it a Tything or Vill.

Mr. Justice *Lee* agreed, if a Vill be considered as a Tything, the Cases cited are right; as a Civil Place it may have a Constable.

Did not think either of these necessary, but it must be something that is in Reputation, a Vill or a Township, which he thought this was not, on the State of it.

The proper way to have brought this before the Court had been on Motion for a *Mandamus* to appoint Overseers.

The Court thought this such a Case as never could be taken to be a Vill, and confirmed the Orders.

Trinity Term, Eighth and Ninth of *George* the Second.

The King *against* The Inhabitants of Preston upon the Hill in Cheshire.

MOVED to quash an Order of two Justices, and an Order of Sessions confirming the same.

A Bill of Exceptions was tendered, and received and sealed by two of the Justices, sitting in Court, which was to this Effect, That it appeared on Evidence that *Thomas Harrison*, the Father of the Children, removed about twenty-two Years ago, was licensed by the Ordinary of the Diocese of *Chester*, to be Schoolmaster of the Free Grammar School of *Daresbury*, and at the same Time became Clerk of the Parochial Chapel of *Daresbury*, and officiated in both Capacities from that Time to the Time of his Death, which happened in *April* last, and for fourteen or fifteen Years of the Time resided in *Daresbury;* though it did not appear how he was appointed, or that he was licensed to the Clerk's Place; and it also appeared that the Children had gained no Settlement for themselves. Whereupon the Court was of Opinion, that *Thomas Harrison* gained no Settlement. Exceptions thereto, which Exceptions were received.

Said that a Bill of Exceptions lay to every Court of Record, County-Courts, Courts-Baron, etc. 1 *Inst.* 267.

Said it lay in Criminal Cases, though not in Capital ones.

Mich. Vac. 11 *Anne*, determined by all the Judges, That a Bill of Exceptions lay to the Lord Keeper on a *Scire facias.*

The King against the Bishop of *Litchfield*, 1 *Leon.* 5 *Raym.* 484.

In *Keeling* 15 it seems it will not lie in a Criminal Case, and supposing the Bill of Exceptions lies, then the Question is, Whether the Father of the Paupers gained a Settlement by what is discovered in the Bill of Exceptions?

Executing an annual Office will gain a Settlement. *Salk.* 536. *Gatton* against *Milwich.*

Parish Clerk is an Officer at Common Law, and a *Mandamus* will lie for it; he is here a Clerk of a Parochial Chapel, which is the same as Clerk of the Parish Church. *Trin.* 12 *Anne, Hunsdon* against *Melondon.* Shew Cause.

In *Mich.* Term following Mr. *Wilbraham* took these Exceptions to the said Orders; First, that a Bill of Exceptions will not lie in this Case, it must be on the Statute of *Westminster, ca.* 30. no other Proceedings intended but where they are according to the Course of the Common Law, 2 *Inst.* 426, 427. the Word *Implacitatur* in the Statute signifies an *Impleading* according to the Course of Common Law. Actions Real, Personal and Mixt are only mentioned by Lord *Coke, Carth.* 394. 1 *Salk.* 263. Writ of Error does not lie where Judges act in a summary Method, 1 *Lev.* 68. does not lie in High Treason; in this Case the Quarter-Sessions has not an original Jurisdiction; if a Writ of Error would lie in this Case, it would lie to the Commissioners of Excise, which never was done.

Mr. *Clayton:* This is not a Bill of Exceptions, 1 *Lutw.* 506, 507. The Case ought to be stated, as well as the Opinion of the Court; as to the Case in *Raym.* 484, etc. it is said a Bill of Exceptions will not lie in a Criminal Case; 2 *Inst.* 429. was cited to shew it lies to the County-Court, etc. But the County-Court proceed according to the Course of Common Law, 1 *Sid.* 84, 85. *Lev.* 58. It does not lie in High Treason, Sir *H. Vane's* Case. In Answer it was said it was indifferent, whether the Matter now returned in this Bill of Exceptions is in that way, or in the Body of the Order. The Statute of *Westminster* 2. has always received a literal Construction, except in Sir *H Vane's* Case before mentioned.

Lord *Coke* says this Statute was made to supply the Case where a Writ of Error did not lie, and when he is speaking of the Courts Baron, Hundred, etc. he says it extends to them, and by good Reason, because their Judges are most likely to err.

Justices of the Peace are *Justiciarii* as well as any other, and within the Letter of the Act.

Bill of Exceptions to the Lord Keeper, sitting in the *petit* Bagg, *Mich. Vac.* 11 *Anne*, and the Burgesses of *Liverpool* by all the Judges. *Gold.* 136.

No Action will lie against Justices for what they do in the Quarter-Sessions. *Carth.* 94.

A Writ of Error does not lie in High Treason, without Leave of the Crown signified by the Attorney General.

5 *Lamb. Lib.* 4. *c.* 13. to shew that Bills of Exceptions lay.

1 *Vern.* 75. Bill of Exceptions to the Chief Justice.

Some of the Courts, to which this Act has been determined to extend, admitted that Justices before the Statute of *Edward* 3. were only Conservators or chief Constables.

The Justices are bound by the Rules of Evidence, though they do not judge in the Course of the Common Law.

This is a *Pleading* between the Parties, and will satisfy the Word *Implacitatur* mentioned in the Statute.

Admitted a Bill of Exceptions does not lie in a Capital Case, but in all other criminal Cases.

The King against *Bunce*, Sittings after *Hilary* Term, 2 *Geo.* 2. before Lord Chief Justice *Raymond*, declared it would; as to the Case in *Carthew* a Writ of Error did not lie, because no Judgment.

As to the Form of the Bill of Exceptions, that the several Proceedings should be recited, did not see the Reason for it, since the Record was before the Court.

Chief Justice said, This was a Case of some Consequence, and wished to have it put in the Paper to be fully spoke to. Said he had no Doubt, but in all Courts, proceeding according to the Course of Common Law, a Bill of Exceptions lay, let the Name of the Judge be what it will; and so was the Opinion of the Judges in the Case of the petty Bag.

But this is a summary Proceeding, and no Case cited of a Bill of Exceptions. *Aliquis implacitatur* does seem to extend to all criminal Proceedings, and yet it has been held Informations in the Exchequer not esteemed criminal; and in the Case before Lord *Raymond* a Juror was withdrawn.

It is an *English* Proceeding, and always was so, and if this be an *Impleading*, would it not be within the Statute of *Edw.* 3. where they are to be inrolled in *Latin?* and yet these Orders never were so. As to the Form of the Bill of Exceptions he supposed the Reason why all the Proceedings were recited was, because there was not room to indorse the Bill frequently on the Record; and then when it was to be in a separate Record, it was necessary to set out all; but where it could be indorsed so as to be made a Part of the Record, saw no Reason for it, said he desired to have it put in the Paper, and that Copies should be delivered to them.

In *Easter* Term following, on the Question, Whether a Bill of Exceptions will lie to the Justices proceeding on Appeal, under the Statute of *Car.* 2.

It was said, that this Statute extends to the Judges of all inferior Courts under what ever Name called; it extends to all Suits real, personal or mixt. *Co.* 2 *Inst.* 427. *Reg.* 182. Writ to the Sheriffs of *London* on this Act. *Ryl. Placit. Parl.* 669. *Mich.* 11 *Ann.* Queen against *Mayor*, etc. of *Liverpool*, where all Cases are cited.

Never denied whether a Bill of Exceptions lay. 5 *Lamb. Lib.* 4. *c.* 13. 1 *Vern.* 175. King against *Bunce*, *Hil*, 2 *Geo.* 2.

Lord *Chief Justice:* The King against *Bunce* was when I was Attorney General, and it was said by Lord *Raymond*, That a Bill of Exceptions would not lie in a criminal Cause, the only Case where denied, Sir *H. Vane's* Case.

It will be objected, That all these Cases are Proceedings according to the Course of the Common Law, and the present is a summary Proceeding; Statute *W.* 2. *c.* 30. the Statute mentions only Justices itinerant, and yet held that it extends to others.

Mr. *Wilbraham:* There is no Case where a summary Proceeding and a Bill of Exceptions lay; admitted he had mentioned several Cases where the King was a Party; but still they are in the Nature of civil Suits.

This must lie on the Statute of *W.* 2. or not at all.

Lord *Coke* has been very explicit in his Exposition on this Statute; *cum aliquis implacitatur* must mean a Proceeding according to the Course of Common Law.

The Statute 37 *Edw.* 3. directs that all *Pleas* shall be inrolled in *Latin*.

These Proceedings were never so inrolled, being never looked on as Proceedings within that Act.

Thurston against *Slatford*, 1 *Salk.* 284. Where a Bill of Exceptions lies; 1 *Salk.* 263. *Carth.* 394. Sir *H. Vane's* Case, held no Bill of Exceptions lay in a criminal Case.

5 *Co.* 104. *Cro. Eliz.* 71. *Co. Lit.* 72. *a.* where the King is a Party.

This is not an original Jurisdiction, but an Appellant, and the Legislature might intend they should be final.

Quarter-Sessions act in a double Capacity, Judge and Jury, and the Objection that they will not find something in the Nature of a special Verdict; made a Question if this Court could oblige a Jury to find specially.

Suppose a Witness be examined at the Quarter-Sessions whose Evidence is disbelieved by the Majority, yet one single Justice may believe it, and allow a Bill of Exceptions against the Opinion of all the other Justices. Commissioners of Excise have a vast Jurisdiction, yet as they proceed contrary to the Course of Common Law, no Bill of Exceptions lies.

In Reply it was admitted the Judges could not oblige a Jury to find a special Verdict.

Lord *Chief Justice:* The Determination of this Case is of a good deal of Consequence; had heard it said in this Court that it was much to be wished that a Bill of Exceptions lay, but there were great Inconveniences on both Sides.

No one Case cited that warrants the Court, that a Bill of Exceptions would lie, and

therefore it must be collected from the Statute itself. Was of Opinion a Bill of Exceptions will not lie when any one is impleaded, etc. thought this must be such a Method of Proceeding as in Construction of Law is an Impleading. Lord *Coke* speaks only of Actions Real, Personal and Mixt, and mentions no other; agreed it was mentioned in *Lamb.* that it would lie on an Indictment, but he did not know that had been judicially determined. Sir *H. Vane's* Case was a capital Case, and in that Case no Bill would lie; and indeed in such Cases a Man is not allowed Counsel, and many other Restrictions. Said he would not give an Opinion whether it lay generally in a meer criminal Case, it is said in Sir *H. Vane's* Case it would; as to several Instances in the Exchequer, they are considered but as civil Suits, as Actions of Debt for the Duty, or as Actions of Trover for the Goods; the present Case is quite different; however it is a summary Proceeding; no Instance where, in such Cases, a Bill of Exceptions lay. If we should determine it did lie, it would lie to the Judgment of every single Justice; to the Judgment of the two Justices in the present Case; further this is not a Matter of Record, and that is the Reason why these Orders are not entered in *Latin;* never thought a Bill of Exceptions lay where the Proceedings are not of Record.

As to the Argument that a Writ of Error did not lie, and therefore that a Bill of Exceptions should, it is the strongest Reason against it, for in the Case of Bills of Exceptions they are to be determined on a Writ of Error, for it is not the same Court that determines. *Certiorari* does not complain of any Error of Judgment, but meerly to remove the Proceedings at the Election of the Party, as a Writ of Error does; and said, that struck him much; that a *Certiorari* would not remove a Bill of Exceptions; thought the Objection made by Mr. *Wilbraham* material; that the Justices were Judges of the Fact as well as Law; and who shall say on what Grounds they pay a Credit to one Witness or another? and the Justices may divide as mentioned; so that two Justices might allow a Bill of Exceptions to state an Evidence for this Court to determine on, which was disbelieved by the Majority of the Justices. Concluded that the Order of the Sessions must be affirmed, for that a Bill of Exceptions would not lie.

Michaelmas, Eighth of *George* the Second.

The King *against* Burridge.

THE Defendant was indicted for feloniously aiding and assisting one *William Palmer*, convicted of Felony, to escape out of Gaol. And at the Trial a special Verdict was found, that *William Palmer* was convicted of Felony for stealing an Ewe Sheep; that he was adjudged to be transported to the Plantations for seven Years; that he was in such a Gaol under the Custody of such a one, and remained in the said Gaol under the said Judgment of Transportation; that no Contract had been made for the transporting the said *W. P.* that the said *Burridge* being a Prisoner in the same Gaol on such a Day, etc. feloniously aided and assisted the said *W. P.* to escape; that he escaped accordingly, and if, etc. then they find him Guilty, and if, etc. Not guilty.

Mr. *Peere Williams Senior:* The Question upon this special Verdict is, whether *W. P.* at the Time of his escaping was a Felon or not; admitted if *W. P.* by any Act of Parliament was pardoned, or to be considered as a pardoned Person, then the Defendant could not be guilty of Felony in aiding him to escape.

W. P. being convicted prayed the Benefit of the 5th of *Anne, c.* 6. and was ordered to be transported for seven Years.

Submitted that *W. P.* at the Time of his Escape was a Felon, and said he would take Notice of the several Acts of Parliament which had taken away Purgation, etc. to that which substituted Transportation in the stead of Burning in the Hand, in order to trace out when the constructive Statute-Pardon took Place.

That the Trial by Purgation having by Experience been found very mischievous, as it was attended with Perjury, and that which generally goes along with it Subornation of Perjury, as it was in itself grounded upon a Popish Tenet, whereby the Clergy were exempt from Lay Judicature. The Statute of 18 *Eliz.* was made, which took away Purgation, but put the

Offender in the same Condition as if he had performed it. But he was not cleared till his Clergy was allowed, and he was burnt in the Hand.

But it is objected, that Burning in the Hand was no Part of the Punishment, and 5 *Co.* 50. *Bigden's* Case, *Hob.* 294. relied on, but said he thought my Lord *Coke* was mistaken in that Case, and that Burning in the Hand was Part of the Punishment; it was not by Common Law, but came in the 4th of *H.* 7.

If the Burning is not Part of the Punishment, it is said he is intitled to a constructive Statute-Pardon allowed from the Clergy. But my Lord *Coke* seems mistaken in *Bigden's* Case, and the Contempory Reporters mention it different from him, *Moore* 571. *Cro. Eliz.* 632, 682. *S. C.* where it appears the Appeal was discontinued, and no Judgment given; he said he thought the Reasons by my Lord *Coke* rather weakened the Case than otherwise.

First, He says it is no Part of the Punishment, but it is painful and infamous.

Secondly, That it is no Part of the Judgment, but the Judgment is otherwise, *viz.* that he shall be burnt, and so it appears, *Raymond* 369. and *Coke* owns it was a Part of the Judgment. The Crown could not pardon it on Appeal, which Concession gives up the Authority of that Case.

The Case of *Searle* and *Williams Hob.* 294. was in the Case of an actual Clergyman, who was not subject to that Part of the Punishment, and therefore argues nothing; said what he contended for was this, that if the Offender was not a Person exempt from being burnt, as a Clergyman, a Peer of the Realm or a Person actually pardoned, that Burning was a Part of the Punishment, and the Party was not intitled to the constructive Statute-Pardon till he was burnt.

Hale's Pleas of the Crown, Tit. *Clergy*, cited against him; but he said there was a Case of very great Authority in this Point, which was that of the Earl of *Warwick* in the House of Lords 28th of *March* 1699. *State Trials*, 4 *Vol. p.* 380.

A Witness convicted of Manslaughter, not pardoned, who had his Clergy, but not burnt, was by the Opinion of *Treby* Chief Justice, and the rest of the Judges attending the Trial, disallowed for a Witness, as remaining charged with such a Crime; and *Searl* and *Williams* was much relied upon in that Opinion; hence he concluded, that under the Former Statute, Burning in the Hand was a Condition precedent to a Statute-Pardon, which he said was only a constructive Pardon introduced by the Judges in the Exposition of the Statute of *Eliz.* and with great Justice he admitted. For as under Purgation the Party who was found Not guilty was cleared of the Offence, so under the Statute of *Eliz.* when a Person had suffered the Punishment of burning, in the stead of going through Purgation, it was but just that should have the same Effect.

He then proceeded to mention the several Cases following, to give an Account of the Nature of the Benefit of Clergy; that it was a Favour shewn to literate Persons in favour of Learning. *Hob.* 288, 289. *Poulton de Pace Regis. Wood's Inst.* 388. *Stanf.* 138. *Hob.* 291. calls Purgation a Mock Trial; however Purgation had no Retrospect, *Foxley's* Case, 5 *Rep.* 210.

The Manner of burning Offenders has been varied by different Acts; sometimes it was in the Cheek, but at last in the Hand. The Statute 5 *Anne, c.* 6. takes away the Ceremony of Reading, but directs the Party to be punished as a Clerk Convict, only the Intervention of the Ordinary is dropt by that Statute; but the Felon has Benefit of Clergy. But the Statute is express in this, that he shall be punished as a Clerk Convict.

By the 18th of *Eliz.* it is directed, that the Offender after his Clergy allowed, shall be burnt in the Hand, and afterwards delivered out of Prison; and surely by that Statute he is not intitled to his constructive Pardon till he is to be delivered out of Prison, which is after Burning.

By the 4th of *George, c.* 1. Transportation instead of Burning; but the Party must have his constructive Pardon in the same Manner as under the Statute of *Eliz. viz. after his Term of Transportation performed, and not before;* for the Exile is now instead of Burning, and he was not intitled to it till after burnt; *ergo*, not till Transportation performed.

It is found in the special Verdict, that no Person had contracted for *W. P.* in order to his Transportation; but that makes no Difference, he was still under the Sentence of Transpor-

tation, he still remained loaded with his Guilt, and was as a Felon, and that expressly by the Statute of *George, c.* 11. which expressly declares, *that the serving the Transportation is to intitle the Party to his Pardon.* It was objected, that these Words being only in the affirmative, did not take away a Pardon the Party might be intitled unto notwithstanding; but he said that this Affirmative implied a Negative, and which they always did in new Laws, as in the Case of the Statute of *H.* 8: of Uses, *Plowd.* 111. 1 *Inst.* 348. and he argued that if in any Case a Negative was to be presumed, this was one; since by construing the Act otherwise, and supposing that the Party was pardoned after Clergy allowed, and before Transportation, was to make such a Chasm in this Case, and would necessarily encourage Escapes, etc. And indeed to construe the Statute of *George* otherwise, would be to make the whole Clause before mentioned useless, which expressly declares a Pardon resulting from the serving the Term of Transportation. He said it was preposterous to urge that *P.* was pardoned before Transportation, and yet to be transported; that it would be to suppose a Pardon first, and a Punishment after.

The 6th of *Geo.* 1. no way regards this, as it is found no one had contracted for *P's* Transportation. He concluded with saying, that the Serving the seven Years Transportation was a Condition precedent to his Pardon under the 4th of *George* 1. as Burning was under the Statute of *Eliz.* and that *P.* remained a Felon at the Time of his Escape, and that Aiding him to escape was Felony at Common Law, and hoped the Court would make a Rule for transporting the Defendant the now Prisoner. He then proceeded to answer several Exceptions which had been taken on a Former Argument to the Indictment, etc.

First, the want of the Words *Vi* and *Armis;* this he said was aided by 37 *H.* 8.

Chief Justice seemed to doubt of that very much, he said that in the Case of *King* against *Wild, Easter* 2 *George*, the Words *riotously* and *routously* were held to be sufficient without the Words *with Force and Arms*, but these Words implied a Force. 2 *Lev.* 229. *Marriott's* Case.

Mr. *Williams* said in this Indictment was the Word *feloniously*, which was sufficient.

Another Objection, that it is not found that *B.* knew that *P.* was in Gaol for Felony. *Answ. Hale's Pl. Cor.* 218. He is found to be within the same County, and then he is bound to take notice of it. He said indeed my Lord *Hale* himself seemed to be of a different Opinion from this, *Stanf.* 41 *ad idem.*

But he said, without these Authorities, *B.* was doing an unlawful Act, and must answer for all the Consequences attending that Act, 3 *Inst.* 56. and mentioned as a special Authority *Benstead's* Case, *Cro. Car.* as it was the Opinion of 10 Judges. *Limbrick's* Case, *Keeling* 77. was resolved by 11 Judges, that to break a Prison where a Felon escapes is Felony. Urged that in Answer to the Objection that it did not appear *Burridge* knew that *Palmer* was convicted of Felony.

Another Objection, that *B.* is not indicted for breaking the Prison, but only aiding and assisting in the Escape, and so only an Accessary. But he said that Assisting in the Escape was Felony, 2 *Inst.* 589. Prisons are the King's.

Said that where a Man was committed for any Capital Offence, he was looked on as in safe and secure Custody, so that the Relations might come and comfort him, though being out of Prison, no one but his Wife durst do it.

The Case 2 *Inst.* 589. altered by the Statute *de Frangen. Prison. Poulton de Pace Regis* 147. Breach of a Prison Felony, where a Felon escapes.

Assisting a Felon attended with the same Inconvenience, *Hale's Pl. Cor.* 116. to Rescue a Felon, Felony.

The Person assisting contracts the same Guilt as the Person had who by his Means escaped. The Law communicates the Crime of the Prisoner escaping to the Person assisting therein. *Stanf.* 43. *Poulton* 144. *Hale* 107.

That *B.* was in this Case capable of being an Accessary, and therefore could not be looked on as a bare Accessary himself.

Chief Justice: If this be a Rescue, without doubt he is a Principal. *Answer.* It is found that *Burridge* was in the same Prison, and he must be understood to be present, and if present he must be a Principal, tho' it be only an Escape.

If one be present ready to aid in a Felony, though he does nothing, he is a Felon.

But if he was to be considered only as an Accessary, the Word *Accessary* is no Technical Word, and then he is indicted as an Accessary, to show that the Word Accessary is not used. *Tremain*, 288, 33. *Hawkins's Pl. Cor.* 2d Part 315.

Upon the whole he hoped the Indictment was sufficient; but if the Court should be of Opinion it was not, he said the prisoner must be tried again; and so was the Case of the King against *Kith. Holt* Chief Justice.

Mr. Serjeant *Hawkins* for the Prisoner: It is given up that this is not an Offence on the Statute, indeed the Indictment is not on the Statute.

Then as to Common Law, the Sentence of Transportation is a Statute-Pardon by Construction; Burning was instead of Purgation, and now Transportation instead of Burning. But it is the Judgment given that the Party shall be burnt, etc. not the Act of Burning, etc. that makes the constructive Pardon.

But it is objected, that the Statute *Geo.* 4. expressly says the serving the Term of seven Years, or other Term of Transportation, shall be the Pardon; and that these affirmative Words imply a Negative. But he insisted it was not so in this Case; this was no new Law, it only varies the Punishment; and as to the Argument drawn from the Statute of Uses, that is because a different Construction would do manifest Violence to the Words of the Statute, but in this it will not.

As to the Argument *ab inconvenienti*, that the Party would go off unpunished, it is a very great Misdemeanor, but not Felony.

Insisted the Allowance of Clergy was a Pardon *sub modo*, and Transportation the Terms of it, and then that *P.* was not a Felon at the Time of his escaping, nor was so by the Act of escaping, nor can *B's* assisting him in it make him a Felon.

Said the want of the Words *Vi* and *Armis* in the Indictment was fatal, and many Indictments for lesser Matters had been quashed for lack of them; that the Case cited on the other Side, where there were the Words *riotously* and *routously*, is very different, for these Words imply a Force *ex vi termini*.

But the Aiding charged in this Indictment might be without Force, it might be by Persuasion, by Interest, by Gifts, etc. He admitted that Breaking a Prison was Felony at Common Law, but there is nothing of that found here.

Insisted, that the want of shewing that *B.* knew that *P.* was convicted of Felony was likewise fatal. All the Precedents have the Word *Sciens*, even those cited by Mr. *Williams*, *Co. Entr.* 56. *pl.* 5. 57. *pl.* 6. *Rast. Entr.* 153. *pl.* 3. 47, 51, 15. *Offic. Cler. Pac.* 230, etc. Lady *Lawley's* Case in this Court.

As to the presumptive Knowledge contended for in Persons being in the same County, *Fitz.* Tit. *Coron.* 377.

Besides, where that Doctrine is laid down, it does not appear it is intended as any thing more than Evidence of Knowledge. *Dyre* 155. *pl. Cromp.* 43. *Stanf.* 41. Besides, these are not judicial Opinions, *Stanf. Pl. Cor.* 96. *d.* cites the Year Book, 8 *E.* 3. 6. 7 *H.* 6. 42. *pl.* 18.

Nothing can be intended which is the very Jet of the Thing, but it does not appear the now Prisoner lived in the County, and then this Doctrine does not hurt him. *H. Pl. Coron.* 219. and in *Bracton* the Word *Scienter* is used.

3 *Inst.* 133. it is laid down as a Maxim.

It is concluded that *B.* was a principal Felon in the Case, no one Case cited that makes him so.

P. was no such Felon for escaping, and as to the Case cited, that it was not necessary a Man should be called an Accessary, he agreed the Precedents cited, but said those very Precedents proved the Word *Scienter* ought to have been in the Indictment.

The knowing that *P.* was a Felon seems to be the Essence of the Offence, and saying that *B.* feloniously aided *P.* to escape proves nothing.

Upon the Whole, here is a Man adjudged to be transported, is aided to escape by the Defendant, not said with Force and Arms, not said he knew him to be a Felon, nor how the escaping happen'd.

Hoped the Indictment was not good, and that if it had been so, yet that in this Case

there is no room to charge the Defendant as a Felon, though he might be punished another way.

Mr. *Williams* replied: The Statute 4 *Geo.* and all the Authorities cited by me, are contrary to this Doctrine, *that the Judgment amounts to a Pardon.* *Stanf.* and *Hale* express as to the Notice. To Persons within the same County no Case cited to the contrary.

Insisted on the Inconvenience of the Case between the Judgment and the Time of Transportation, according to what was contended for.

In *Hilary* Term following the Lord Chief Justice delivered the Opinion of the Court to the Effect following:

Many Objections have been made in the Argument to this Indictment, which must be first considered; if that be bad, the finding of the Jury cannot help it.

First, What Crime is charged.

Secondly, Whether well charged.

As to the first, it is Conjecture and nothing more; the Indictment was found on the 6th of *Geo.* 1. *c.* 23. but the Fact not set out so as to bring the Prisoner within that Law.

But it has been insisted on either that this is a new principal Felony distinct from *P.* or an Accessary to *P.* after the Fact.

No Colour to support the Indictment as to the Breach of the Prison, for no Breach of the Prison is laid; which is absolutely necessary. *Stanf.* 31. *a.* 2 *Inst.* *Hale's Pleas of the Crown* 108.

All agree an actual Breaking must be alledged.

They were also of Opinion it is not a good Indictment for a Rescue, *Recussit* not used. *Dyer* 1646. *West's Precedents*, Tit. *Indictment* 196, 181. This might be an Escape with the Assent of the Gaoler, and no force used.

But it was urged this was equally inconvenient; we cannot make new Felonies, it is our Business *Jus dicere*, not *Jus dare.*

As to his being Accessary after the Fact, all of Opinion a Man may become a Felon after the Fact, by assisting in an Escape of Felon, receiving, etc. Before the Statute 1 *Anne*, *c.* 9. Accessary in the Instances therein mentioned could not be arraigned. But that was remedied by this Act.

First Objection; That *P.* was no Felon at the Time of the Escape; this opened a wide Field of Argument, but he would not enter into that, but refer to three Cases, *Hobb. p.* 288. *Searl* and *Williams; Keeling* 93. *Armstrong* and *Lisle; Vol.* 4. *State Trials, p.* 383. Lord *Warwick's* Case.

Before the Statute of *Geo.* 1. if Offender had escaped before actual Burning he had remained a Felon Convict. But it was objected in *Searl* and *Williams*, that *Searl* was intitled to his Statute-Pardon, though not actually burnt. But *Searl* was a Clerk in holy Orders, and therefore not to be burnt.

Second Objection; The King may pardon the Burning, and the Offender shall be considered as having satisfied the Law.

But here the Pardon is substituted in the Place of the Punishment.

The Judgment of Transportation was urged to be sufficient, though not actually transported. But for this no Authority; the Precedents are otherwise, so is *Armstrong* and *Lisle* in *Keeling*, 4 *Co.* 45, 46. And what said by Lord *Holt* in the above Case does not prove that actual Burning is not necessary, but only that the Party shall not be injured by the Delay of the Court; therefore was clear that a bare Judgment of Transportation was nothing to amount to a Statute-Pardon; it might as well be urged that the Prayer of Pardon should be sufficient.

What Alteration then has the Statute of *Geo.* 1. made, the Words and Intention are very plain, Judgment of Transportation only in the Place of the Judgment for Burning; and actual Transportation and Service in the stead of actual Burning.

Nothing can be plainer than this Act, the Service of the Term of Transportation is that which clears the Offence.

But it was objected, These are only affirmative Words, and therefore do not repeal the Force of a Term and Law. But this Affirmation explains the former Part of the same Law

But what is the Discharge before so much relied on? It is the Judgment of Transportation which must be carried into Execution, so that it is only a Pardon *sub modo*.

But the Judgment of the Court will be on the Indictment, it must be on the second Part. All of Opinion that the Indictment is materially defective.

Not said Prisoner knew *P.* was a Felon, *Bract. c.* 13. *Stanf.* 41, 6. 3 *Inst.* 138. *Hale's Pl. Cor.* 216. *Rast. Precedents* 43. *Co. Entr.* 5.

What was attempted to cure this will not do. *Burridge* being a fellow Prisoner with *P.* is only Evidence of Notice, and therefore not sufficient for the Court to give Judgment on. *King* and *Huggins*, lately in this Court. Another Objection, that *P.* was convicted in the same County with *B.*

Fitz. Tit. *Cor.* 377. *Stanf.* 41, 6. *Hale's Pl. Cor.* 218. Said he had looked into *Maynard E.* and could not find it, and the Note was very loose in *Fitz.* and without mentioning *Notice;* but if it had been mentioned in two or three Books, it would be harsh Law.

And it seemed strange how it could be so at Common Law, for before the Statute of *Ed.* 6. it was not an Offence for a Person in one County to be accessary to a Felony in another. *Hale* seems of a different Opinion. But if this be legal Notice, it is not sufficient without actual Notice. *Lamb.* 263.

An Outlawry or Attainder may be Evidence to a Jury, but is not sufficient to amount to an actual Change of Notice.

But this is not strictly laid to be done in the same County; it is not *Ilchester* in the County aforesaid, but only *Ilchester* aforesaid, and they could not take Notice that the whole Town of *Ilchester* was in the County of *Somerset*, 1 *Syd.* 345. at *Salop*, without saying in the County aforesaid, is well enough in a Declaration, but not in an Indictment. In *King* and *Fosset* it is held ill.

Not alledged *P.* was in Prison at the Time of his Escape for any Felony; so being in Custody as aforesaid is only found by the Jury, and not sufficient; and as to the Objection for want of *Vi* and *Armis*, whether aided by the Statute *H.* 8. is a Question of great Consequence. The Cases are very various, and therefore he would not give Judgment on that till a Case should happen wherein it was absolutely necessary, which is not in this, because there are several other Faults.

All of Opinion to discharge the Prisoner, and not barely to quash the Indictment, only one Authority for it, *Skin.* 5 *Mod. Kent's* Case, no Judgment entered; said he had a Manuscript of it there, it was clear the Prisoner was a Felon, though uncertain of what Sort.

But here is no Felony found; suppose Demurrer, Acquittal must have been the Judgment, and so it must now.

No Inconvenience, for this Acquittal will not be a Bar to an Indictment properly laid, to create a different Offence, though it will to the same Offence. Judgment for the Defendant.

Afterwards it was moved that the Prisoner might not be discharged, being charged with a Misdemeanor, besides the special Verdict for Felony.

Chief Justice: If he is charged with any thing else, we shall not discharge him from that, but called for the Return of the *Habeas Corpus*, which not being in Court was sent for, and it appeared he was charged by a Warrant for a Misdemeanor; and so

By the whole Court: Let the Prisoner be discharged from the Commitment on the special Verdict, and remanded on the other Matter.

Michaelmas, Eighth of *George* the Second.

The King *against* The Justices of Somerset.

THIS came on in the Paper on a Return to a Writ of *Mandamus*, granted by the Court *to the Justices of Somersetshire generally*, or to some of them, to grant a Warrant of Distress against two Persons, formerly Overseers of the Poor of the Parish of ——— in the County of *Somerset*, to levy the Sum of thirty Pounds seventeen Shillings and eleven Pence (which appeared to be in their Hands) of the Parish Money. And the *Mandamus* suggested that these two Overseers had made an Account for Money by them collected for such a Year,

according to the Form of the Statute in that Case made, etc. upon which Account there appeared a Ballance as above, which they had refused to deliver over to the succeeding Overseers; that Application had been made to the Justices for a Warrant of Distress which they had neglected to issue, directs them or some of them to grant such Warrant, or shew Cause to the contrary, etc.

They return, that at a Vestry of the said Parish held at such a Time, an Order was made for the said two Overseers to employ an Attorney who was to commence a Suit for the Recovery of some Charity-Money formerly given to the said Parish; that the said Attorney had been accordingly employed, and that the said Overseers had paid his Bill to such an Amount, etc.

Mr. *Gapper:* This is no Return at all to the Writ, which directs them to grant a Warrant of Distress, for if the Fact of the Return which is made is true, it is an illegal Act, and such a one as is not binding. A Vestry cannot order Money in the Hands of the Overseers of the Poor to be employed in any other manner than as the Statute of *Elizabeth* directs, and therefore hoped a peremptory *Mandamus* should be awarded.

Several Exceptions were taken to the Writ, but it was insisted, that the Matter returned was proper. The Statute of *Eliz.* directs the Overseers to account for all Monies, *and other things concerning their Office*, and which having according to the Return exhausted all the Money in their Hands; there did not remain any for them to account for; at least as they had paid this under an Order of the Parish in Vestry assembled, it was a good Account of it.

Exception; That it did not appear either by the Suggestion of the Writ or Return, that an Account had been duly taken. Nor is it said that either of the Justices was of the *Quorum*, as the Act directs.

That the Writ was too general, *to do and perform such other things as should be done and performed.* Whereas the two old Overseers could only be obliged to pay over the Money, and there was nothing else for them to do; hoped the Writ was erroneous, or that the Court would be of Opinion that the Return was sufficient, and that a peremptory *Mandamus* should not go, which, if it did, would be to oblige these Persons to pay over this Money again, and leave them without any Remedy whereby they might be reimbursed.

Lord Chief Justice: The Return is certainly bad, for the Vestry had no Power to direct such an Application of the Money, but it must be accounted for according to the Act. Indeed Rates made for the Repair of the Church, etc. are to be accounted for in the Spiritual Court. But in that Case it is provided by the Act, that the Parish may settle that Account amongst themselves, which will be good as to the Objection, that the Writ is directed too general, it is to the Justices of the County at large, and it is supposed that such Justices as are proper according to the Statute, will execute the Writ; then the Act to be done is particularized, and as to the general Words at the Conclusion of the Writ, it is the constant Form of *Mandamus*.

Upon the whole thought a peremptory *Mandamus* should go.

And *by the whole Court:* Let there be a peremptory *Mandamus*.

The same Term.

The King *against* Reading.

GENERAL Order of Bastardy; Appeal to the next General Quarter-Sessions by the Defendant, who make an Order and set out, That it appears that by the Order of Bastardy the Defendant was adjudged to be the putative Father of a Child begotten on *M. Almont* Wife of *J. Almont* of *Sherburn* in the said County. The said *M. Almont* gave Evidence that the said *Thomas Reading* had carnal Knowledge of her Body in or about *August* 1732, at *Sherburn* aforesaid, and several times since; and that her Husband had no Access to her from the Month of *May* 1731, to the time of her Examination in that Court, being the third of *October* 1733; and that the said *T. Reading* was the Father of the said Child; of which things she the said *Mary* was the only Evidence. And it also appearing to the Court, by Evidence given before the said Court, that the said *J. Almont* the Husband was frequently in the County of *Berks*, six or seven Miles distant from *Sherburn*, where the said *Mary* at

that Time inhabited, and that *J. A.* is now living, and that the said *Mary* was married to him before she was begot with Child; and this being a Cause tried at this *Michaelmas* Sessions, it became a Question whether the said *Mary* was a competent Witness to prove her Husband had no Access to her, which is submitted to the Determination of the Judges who last came the *Oxford* Circuit.

At the next General Quarter-Sessions another Order is made, reciting the Appeal to the last Sessions and the Order of Bastardy, and that the Judges had declined giving their Opinions upon the said Facts. And the Appeal came on at this Sessions to be *reheard.* It appeared to the Court by other Evidence that the said *J. A.* was from the Month of *June* to *Michaelmas* following, or thereabouts, at or near *Southampton*, and that the said *M. A.* was all that time at *Sherburn* aforesaid, whereby it was adjudged that they could not in that time be together, so as for the said *J. A.* to be the Father of the Child; whereupon it appeared to this Court, upon the Oath of the said other Witnesses, and of the said *Mary Almont*, that the said *T. Reading* was the Father of the said Child; therefore it is ordered by the Court, that the said Order made by the said Two Justices of the Peace be and is confirmed. These Orders being removed into this Court, several Exceptions were taken thereto; but the material Exception, and that upon which the principal Question arose was, Whether the Wife could be admitted as an Evidence to bastardize her own Children? and it was said to be against the Rule of the Law that she should be Evidence for or against her Husband; and the Reason of the Law was, that in Case she was to be Evidence against her Husband, as she must be if she could be an Evidence for him, it would be the Occasion of great Strife and Contention, and intirely destroy that Harmony which ought to subsist betwixt Man and Wife. That in Law they were considered as one Flesh, though with two Souls, according to my Lord *Coke.*

That of all things she ought not to be admitted as a Witness in this Case to bastardize her own Child, who perhaps might be intitled unto considerable Possessions by Descent, which might by this Means be taken from him.

On shewing Cause it was insisted, that the original Order of Bastardy was right, and that as to the Sessions Orders which were admitted to be bad, agreed they should be quashed; but then as they were nought in themselves, insisted that the Court ought not to take any Notice of anything in them; as in the Case of a bad Plea, which if bad, the Matter in it was not regarded by the Court. Upon the whole it was said, some Fault ought to be shewn in the original Order, without having any Recourse to the Matter, which was disclosed by the Sessions Orders.

But the whole Court were clear of Opinion, that they must regard the special Matter stated to them by the Sessions, whether the Orders were good or not, and held that the Wife could be a Witness to no other Fact in this Case but that of Incontinence, which she was to be admitted to be from the Necessity of the thing, but not to the Absence of her Husband, which might properly be proved by other Witnesses; and likened it to the Case of Hue and Cry, where the Person robbed shall be admitted a Witness of the Fact of Robbery, but not to prove any other Matter relating thereto, *viz.* in what Hundred the Place was, etc. because that may be proved by others.

The Objection taken to the Sessions Orders arose from this, that the first Sessions to which the Appeal was made, after having stated the Evidence, and that a Question had arose, whether the Wife could be a Witness in this Case, and that they agreed to refer that Question to the Judge who last went the *Oxford* Circuit, without determining any thing, or adjourning the further Consderation of the Appeal to any further Time.

Afterwards, at the next Quarter-Sessions, taking Notice that the Judges had declined to give any Opinion, and that they had then reheard the said Appeal, they confirm the Order of two Justices.

So that the first Sessions determined nothing, nor did they adjourn the Appeal to the next, and the next had no Authority to take up the Matter as a new Cause; and it was said in a late Case of the Justices of *Salop.* An Appeal had been made from the Poor's Rate to the Sessions, and it appeared the Sessions had adjourned the further Consideration of the Matter to the next Day. But it did not appear that the Sessions was at the same time ad-

journed, and they were forced to get an Affidavit that the Sessions continued the next Day, and they got a new *Certiorari* to return that Fact. Upon the whole it was insisted, to make the last Sessions Order good, that an Adjournment should have been made of this Appeal.

In *Hilary* Term following, Order of Sessions was quashed; because not properly adjourned, as was likewise the Order of two Justices, by Consent of Council, and Defendant entered into Recognizance to appear at Sessions, and abide such new Order as the Justices should make on him.

Hilary, Eighth of *George* the Second.

The King *against* Bartlett.

AN Order had been made on Overseers to pay over fifty-six Pounds to the succeeding Overseers on the 43d of *Eliz.*

Appeal to the Sessions, who confirmed the Order, and for non Compliance made an Order against the Defendant for an Attachment for a Contempt.

Moved to quash this Order for an Attachment on the common Principle, that the Sessions has no Power to award an Attachment. But the Party ought to have been indicted.

To which it was answered, That the Statute of *Eliz.* gives the Sessions a general Jurisdiction to make such Order as to them should seem meet. And though in general he admitted the Sessions could not award an Attachment; yet under this Act they had a general Authority, and as a Court of Record they might award an Attachment for a Contempt.

But by the Court: They cannot award an Attachment; said they would not determine how it would have been if they had committed him, but the ordinary and proper Method is by Indictment. Order quashed.

The same Term.

The King *against* The Justices of the Peace of Lancashire.

A RULE had been made for shewing Cause why a *Mandamus* and the Return thereof, which was for the appointing of Overseers for the Township of *Spotland*, should not be taken off the File; the Reason of the Application for this was because the Rule of Court did not warrant the issuing the Writ, which was to appoint Overseers for the *further* Side of *Spotland.* The Rule of Court was to appoint Overseers for the Township of *Spotland* in general.

But on shewing Cause it was said that a Record was not to be taken off the File, but on some very extraordinary Occasion; and if the Writ issued erroneously, Advantage should have been made of that before the Return made.

Lord Chief Justice: The Writ not being according to the Rule was not to be objected to now, they having, by making a Return, submitted to it, and on the Merits in this Case the *Mandamus* will give no Right, if there should come out to be none for applying distinct Overseers for the Hamlet or Vill of the further Side, etc. Rule discharged.

The same Term.

The King *against* Finch.

INDICTMENT against the Defendant for exercising the Trade of a Grocer.

Mr. Serjeant *Hawkins* moved to quash it on two Exceptions.

First Exception; That it is laid that Defendant between the 4th of *September* and the Day of the Caption, *viz.* for seven Months and more, did exercise the Trade of a Grocer, which does not shew the Commencement.

Second Exception; It should be within *England* and *Wales.*

Mr. *Wyrley* in Support of the Indictment said, that though it was not so accurate as it should be, yet it was sufficiently certain as to the Time, which is only Matter of Form; that the 4th of *September* must mean the 4th of *September* last. Several Cases more uncertain have been held good, as in Cases of Convictions of Deer Stealing, between such a Time and such a Time, good, *Carth.* 501. and *Salk. Cro. Jac.* 365. 2 *Lev.* 71. the King and Lady *Broughton.*

Mr. *Proctor* on the same Side: The Indictment appears to be found the 26th of *April*.

Lord Chief Justice: There cannot be a plainer Exception than this, for though a particular Day cannot be laid, by Reason of the Continuance of Time, but the *Terminus a quo ad quem* must be certain. It is true in the Exchequer the Course is on Informations, to lay between such a Time and such a Time; but the Reason is because a common Informer must come within a Year; but this would not have been good, because it would not appear when the Year commenced.

Nothing in the second Exception. But the Court quashed it on the first.

Note; The Caption was, that at the Sessions at *Wokingham*, the 26th of *April* the 7th of *George* the Second, etc. It is presented that *Thomas Finch*, who on the 5th Day of *January* 5 *Eliz.* did not lawfully use or exercise any Art, Mystery or manual Occupation, within *England* and *Wales*, did afterwards, that is to say between the 4th Day of *September* and the Day of the Caption of this Indictment, that is for the Space of seven Months and more, by Force and Arms, etc. in the Town of *Wokingham* aforesaid, in the County of *Berks* aforesaid, use and exercise for his own proper Lucre and Profit, the Art, Mystery and manual Occupation of a Grocer, being an Art, Mystery or manual Occupation used and occupied within the Kingdom of *England*, on the same 12th Day of *January*, etc. in the said 5 *Eliz.* in which he was not educated for seven Years as an Apprentice, against the Peace and form of the Statute.

Easter, Eighth of *George* the Second.

The King *against* The Inhabitants of Oulton.

MOVED to quash an Order of two Justices, the Sessions confirming it, who state specially that *Aylmer* the Father was settled in *Oulton*, that after his Death the Mother with her Children removed to *Burnham Overy*, where she had a Copyhold Estate of her own, and lived there three Months. The Justices were of Opinion that this gained no Settlement for the Children.

He said it had been often determined that Children going with the Mother did gain a Settlement, and cited *Woodend* and *Paulesberry*, *Mich.* 13th *Geo.* 1. and St. *George's Southwark*, and St. *Catherine's*, *Mich.* 1 *Geo.* 1.

Upon the Return of the *Certiorari* in this Case there appeared to be a Bill of Exceptions signed by Counsel, because the Sessions refused to state the Matter specially, which was rather in the Nature of a special Case, not being a formal Bill of Exceptions, which the Court seemed to think was an improper way, and that this did not bring the special Case before the Court, but gave Time to see if they could not take any new Exception.

Afterwards, in *Trinity* Term following, Exceptions were taken to the Return of the *Certiorari*, which returned the Orders and the Paper with the Counsel's Exceptions. That this was at an adjourned Sessions, and it did not appear that this Cause was adjourned, and had a Rule on the Clerk of the Peace and the Justices, to shew Cause why the Return should not be amended.

As to the Adjournment it appeared right.

It was said, on the shewing Cause why the Return should not be amended, that if this Method prevailed, the tendering Exceptions at the Sessions, if they are to be incorporated into the Body of the Sessions Order, will be a constant Method to have the Matter special, whether the Sessions make a special Order or not; and then whatever should become of the Question, whether a Bill of Exceptions lies to the Sessions, it will be intirely useless.

Chief Justice said it did appear the Sessions had determined wrong no Doubt. But the Question was what the Court could do; at length said they would inlarge the Rule for the Clerk of the Peace, and directed the Parish, in Favour of which the Order was affirmed, to shew Cause; also why the Return should not be amended.

The same Term.

St. Peter's and Old Swynford.

MR. *Taylor*, to shew Cause why an Order of Sessions should not be quashed, which had quashed an Order of two Justices in Bastardy, insisted that by the Order of two

Justices it did not appear who *Joseph Ask* was, *Hannah Ask* not being said to be a single Woman.

An Appeal to Sessions, and the Case stated specially, *Hannah Ask* the Mother being dead, he further insisted that *Joseph Haighinton* the Father could not be an Evidence to bastardize the Son; and it not being said *Hannah* was a single Woman, she might be married to another Man. That a Bastard is no Man's Son, and therefore it is improper to call him *Joseph* the Son of *Joseph Haighinton* in the Order; and after, *Joseph Ask* in the same Order, so that it does not appear who *Joseph Ask* is.

It is laid down in *Dalton*, that no Evidence can be given of a Person's being a Bastard but by the Mother.

The Order of two Justices is a bad Order, and the Sessions have done right to discharge the same.

Chief Justice: There is no Foundation for Sessions to quash this Order, the Justices have adjudged him a Bastard, though they have gone further than they need have done.

I see no Reason why the Father should be thought an incompetent Witness, for in this Case his Evidence could no way discharge himself, but he remains liable to maintain the Bastard.

Court quashed the Order of Sessions, and affirmed that of two Justices.

The same Term.

The King *against* Spalding.

Lincoln Holland.—*To the Churchwardens and Overseers of the Poor of the Parish of* Spalding *in the Parts aforesaid, and also to the Churchwardens and Overseers of the Parish of* Bourn *in the County of* Lincoln, *or any of them.*

WHEREAS Complaint hath been made by *You* unto us whose Hands, etc. being two of his Majesty's Justices of the Peace *Quorum unus*, for the Parts of *Holland* aforesaid, that *Henry Burnham* and his Wife lately intruded themselves into your said Parish of *Spalding*, there to inhabit, etc. and are there become chargeable: And whereas upon due Examination and Inquiry made into the Premisses, and upon the Oath of *Henry Burnham* taken before us, it appears unto us, and we accordingly adjudge that the said *H. B.* and his Wife are become chargeable, and that his last legal Place of Settlement was in the Parish of *Bourn*, by being an Apprentice in that Parish to one *John Lambert* a Glover; therefore we adjudge *Bourn* aforesaid to be the Place of their legal Settlement; These are therefore, etc.

From this Order of two Justices an Appeal was made by the Parish of *Bourn* at the Quarter-Sessions held at *Spalding* in and for the said Parts (the Order of Sessions having *Lincoln Holland, to wit,* in the Margent) the 17th of *January* 8 *Geo.* 2. before *A. B.* etc. his Majesty's Justices, within the said Parts and County amongst others assigned, and the Sessions confirmed it.

A Rule had been obtained to shew Cause why these Orders should not be quashed; and now it was moved to make it absolute.

It was objected, that the City of *Lincoln* is a County, and it should have been *Lincolnshire, Cro. Eliz.* 606. 1 *Ventr.* 110. *Trin.* 8 *Geo.* 1. The King and Inhabitants of *Sherringham. Hil.* 9 *Geo.* 1. The King and *Underthwaite. Mich.* 11 *Geo.* 1. The King and *Austin.*

Secondly; Whereas Complaint is made by *You.* It does not appear to be on Complaint of the Officers. *Salk.* 429. 5 *Mod.* 249.

Thirdly; Do adjudge are become chargeable, and not said to whom; St. *Nicholas* in *Gloucester* and St. *Peter's Bristol, Hilary,* 11 *Geo.* 1. only a Rule to shew Cause.

Mr. *Parker:* That the first Exception is good, that it does not appear in what County.

Secondly; In the Parts aforesaid is not sufficient to shew this to be in the Parts of *Holland. Cro. Jac.* 276.

Mr. *Wyrley:* Order not on Complaint of the Overseers of the Poor, but of Overseers, which is wrong. *Salk.* 493.

Without Intendment it cannot appear here is any Direction to any Officers at all, so as to say Complaint is properly made.

The County is not set out at all, and when it comes to be recited it is not said that *Holland* is in any County.

Cited, The King and Inhabitants of *Stow, Hil.* 13 *Geo.* 1.

The County was in the Margent, but not in the Body, and a Rule to shew Cause. *Easter,* 13 *Geo.* 1. The King and Inhabitants of *Oulton.*

Justices *in* the County, instead of *of* the County, was ill.

The *Latin Quorum unus* being in is ill, *unus* not being a technical Word. The Justices have given a wrong Reason, being an Apprentice to *Lambert.*

It must appear the Party is likely to become chargeable; here it is said *actually,* which must appear. *Carth.* The King and *Collington.*

Mr. *Filmer* in Support of the Order, that the Party's Affidavit in the Order of Removal sufficiently refers; this is the Distinction between Orders and Indictments, *Hilary,* 5 *Geo.* 1. *Farnham* and *Whiteham,* in which Case it did not appear to which Parish the Party was likely to become chargeable, and yet held good. That we have given an ill Reason, but we have shewn a good Settlement; that Reference is sufficient, and Complaint by you is so likewise.

As to not being adjudged where chargeable, it is an Adjudication where the Recital is, are become chargeable.

As to *Reason,* if the Justices have given a bad one, the Order will fall to the Ground, but they have given a good one. As to the Order's being improperly directed, and also to Churchwardens and Overseers of the Parish; but a Direction to Churchwardens only would be sufficient as they are Overseers. *Mich.* 11 *Anne, Crownland* and St. *John Baptist, Peterborough.*

Chief Justice: As to the first Exception, that it does not sufficiently appear, etc. I think it well enough; consider how it was when in *Latin;* the Court always understood it to be the County of *Lincoln, viz. Lincoln'* turned up, which *Lincolnia* the Court always understood the County of *Lincoln;* when the City was mentioned, it was always *Civitas Lincoln'.* We take Notice of the Ridings of *Yorkshire,* and so we must of those Divisions, and that there are Justices for the Division called *Holland.*

As to the Reason set out, they have not set out one that would overthrow their Judgment, but may support it; therefore it is only defectively set out, if on that Point.

But they have adjudged it by being an Apprentice, which is by necessary Implication a good Settlement. *Quorum unus* was used in *English* before the *English* Act, therefore good, *Quorum* alone is not technical.

If there had been any other Officer of a Parish called Overseer, that had been an Objection.

As to the Adjudication, *are become chargeable,* Complaint is right there, but no Reference to the Adjudication, therefore thought this not a good Adjudication. But if a Case has been otherwise adjudged, I shall be for agreeing to it. If we can understand *Lincoln Holland* to be that Division of the County of *Lincoln,* then the Parts aforesaid are right; the Rule was inlarged to consider Cases.

Afterwards in the same Term, the Lord Chief Justice delivered the Opinion of the Court to the Effect following.

Lord Chief Justice: Two Exceptions were made to the Original Order.

First, *Lincoln Holland* in the Margent, and not said in what Parts, so as to be certain, by Reference we think this well enough.

King and *Fosset, Easter,* 13 *W.* 3. An Indictment; and the Court said in an Indictment, or an Order, if the County is in the Margent it would be good by Reference; but in an Order it would certainly be good by Reference.

The King and *Austin* does not come up to this Case, for there was no Reference to the County in the Margent. The King and Inhabitants of *Underthwaite* was the same as appears on Orders in the Crown Office.

As to the other Exception, it is more weighty, for it is only said in the Recital, that the poor Person is likely to become chargeable; there the Complaint is well enough; but the

Adjudication is not sufficient, for there are no Words of Reference; and we are of Opinion there must be an Adjudication of the Parish to which he is chargeable; so was St. *Peter's Bristol*, and St. *Nicholas Gloucester*, *Hil.* 11 *Geo.* 1. where the Recital was as here; and the Adjudication was, *and we do accordingly adjudge* the poor Person to be likely to become chargeable, and quashed notwithstanding the Word *accordingly*, which I should have thought a sufficient Word of Reference.

The Case of *Farnham* and *Whiteham*, *Hil.* 5 *Geo.* 1. was the very same, and had the Word *accordingly*, and held ill; though after it went to the Judge of Assize; we think the Adjudication bad and too uncertian. By the Court the Order quashed.

The same Term.

The King *against* St. Mary Berkhamsted, *alias* Northchurch and Aldbury.

THAT *Henry Woodward* was settled at *Northchurch*, by certificate to *Aldbury*, and specially stated, that at *Aldbury* he was made Church Clerk, and executed the Office for several Years; then run away, and left his Wife and three Children at *Aldbury*, who in his Absence were relieved by that Parish. Afterwards *Mary* the Wife had two Houses devised to her by her Mother in *Northchurch*, one in Fee, and the other for Life; the Wife and three Children went and lived in one of them at *Northchurch*.

Note; One of the Children was under seven.

Nothing appeared in the Order that the Husband was dead or alive.

Two Justices by Order remove the three Children to *Aldbury;* Appeal to the Sessions who reversed that Order.

Mr. *Conningsby* had moved to quash the Order, and upon shewing Cause the following Questions arose;

First, Whether the Office of a Parish Clerk is such an Office as gains a Settlement?

Secondly, Whether, as this Case is circumstanced, the Children are not settled with the Mother?

Mr. *Marsh:* In this Case it does not appear *Woodward* was a Clerk chosen by the Parish, which otherwise will not gain a Settlement. *Salk.* 536. and *Townsend* and *Thorp*. That by going with the Mother the Children gain a Settlement, *Woodend* and *Paulesbury*. In the Case of the King and *Mellish*, *Hil.* 1711. 3 and 4 of *W.* and *M.* Certificate is an Estoppel, the Case of *Honiton*, there comes a Benefit to a Parish by a Person's serving an Office of Burthen, as Churchwardens; but not of Salary or Profit, as a Clerk. If this should be so, then the Question will be, whether the Husband being run away, the Court will not consider him as a Person not in Being, or at least that the Wife's going was not in the Husband's Right; and at present it is his Estate in her Name.

They have not ventured to remove the Wife, but only the Children; the Man has not been long heard of, and if she was to marry, she would not be subject to Penalties; the Order of Sessions quashing that of two Justices, is good.

Mr. *Conningsby* on the other Side: So long as there is a Father, he is Head of the Family; it being a profitable Office is rather an Argument in Favour of the Settlement; and that of the Children is always derived from the Father.

On the second Point he agreed, if the Father was dead, then the Mother, as Head of the Family, would give the Children a Settlement; but it has never went so far as this. *Buckington* and *Jeffington*, *Trin.* 9 *Geo.* 1.

An Apprentice serving as an hired Servant, during his Apprenticeship, is not *sui Juris;* so here the Wife is *sub potestate viri*, and not *sui Juris*. That if this Woman had been in the Order, she might have been removed to *Aldbury*, and according to the Statute 5 *Geo.* 1. Rents might have been applied for the Maintenance of her Children.

Mr. Serjeant *Hawkins* on the same Side: In *Townsend* and *Thorp*, and *Peak* and *Bourn*, a Case in *Godb.* was much relied on, that a *Quare impedit* lies of a Chanter's Place.

The Husband must be supposed to be alive, unless the contrary appears, and differs from the Case of a *Scotchman* or Foreigner.

It is said the Husband would be settled, which I agree, if he had resided he would, but not otherwise.

No Case where a Feme Covert can gain any Right during Coverture.

That a Collector of Births and Burials gains a Settlement.

As to an Estate, a Man cannot gain a Settlement by it, unless he resides on it.

A Widow that marries a second Husband cannot gain a Settlement by it, after the Settlement of her first Children. The Wife is Part of her Husband and an Appendage of him.

Lord Chief Justice: I think as the Fact is stated on this Order, we must take it that the Children could gain no Settlement but what is derived from the Father, as he is not dead. As to the Wife's not being liable to Punishment if she marries again, it does not appear when the Husband run away.

The Case of a Foreigner is different; on this Order we must take it the Husband is alive.

Then Whether the Office of a Parish Clerk gained him a Settlement on this Order I am doubtful.

It is stated he was made Church Clerk, that may be Vestry Clerk; annual Office must not be taken strictly; but an annual Office must at least have a reasonable Construction; and so held by two Judges in the Case of *Milwich.*

Whether appointed by Parish or Parson is not material, if he executes an annual Office in the Parish; did not think the Court was bound by Law to take Notice for how long he was appointed Clerk, but it ought to have been stated.

Then supposing he did gain a Settlement as Clerk, he has gained none since; for though a Man (as a Case out of Statutes) may go and live on his own when he pleases, yet if he has not resided forty Days, it gains him no Settlement; and two Justices cannot compel him to go there. And afterwards the Matter was referred to the Justices of Assize.

Michaelmas, Eleventh of *George* the Second.

The King *against* Bryan.

MR. Serjeant *Hussey* to a Conviction on 9 *Geo.* 2. against Defendant, for keeping an Alehouse without Licence, in the Borough of *Taunton,* took these Exceptions following;

First, That neither the Mayor of *Taunton,* nor the Justice appears to be of the *Quorum,* which is necessary.

Secondly, Forfeiture to the Poor. It appears one of the Parish is Evidence.

Thirdly, It is by one Witness only, and by 3 *Car.* 1. which has Reference to the 5th and 6th of *Edw.* 6. *c.* 5. it must be two Witnesses. Indeed it is said on his Confession.

Fourthly, The Case of Summons, the Difference between Orders and Convictions is settled, the King and *Floyd,* only said here duly summoned, the King and *Simpson, Hil.* 3 *Geo.* 1.

Fifthly, 2 *Geo.* 2. *c.* 28. takes no Notice of any Towns, but in any City or Town Corporate, does not say it was a Town Corporate.

The same Licence not appearing, no Jurisdiction.

Sixthly, They should have averred, that this Licence was not granted at a publick Sessions or at any other General Meeting.

On the other Side: In support of the Conviction is was said he could not find that the Statute 3 *Car.* 1. had any Reference to the Statute of *Edw.* 6.

Quorum not necessary, and rather a Repeal of *Edw.* 6. in that Point.

As to Witness, no Witness is mentioned, it is Informer.

As to Summons, it is said he was summoned and appeared; but if he had appeared, that would have been sufficient.

As to no Adjudication, it is set out that Defendant produced the Licence, and said he had nothing else.

All the Evidence was the Licence which was set out. *Trin.* 13 *Geo.* 1. The King and *Davis.* Order of four Justices at *Bristol* to discharge an Apprentice ill, because not said *Quorum uuus,* though four were present at the Sessions, yet to hold it, one must be of the *Quorum.* 2 *Salk.* 474.

Lord Chief Justice: Some of the Exceptions are of no Weight, particularly that of saying

one of the *Quorum*, because the Statute of *Car.* 1. has no Reference in that Respect. As to that of Summons it is well enough, the King and *Simpson* different; the great Doubt was whether after Summons Defendant, not appearing, could be convicted, and after Consideration, held he might; but here he was duly summoned and appeared.

Not satisfied in Respect to setting out the Evidence. The King and *Abel*, *Trin.* 5 *Geo.* 2.

Not set out that the Witness did swear that Defendant was appointed Collector, and quashed for that.

The King and *Theed*, *Mich.* 5 *Geo.* 2. there the Words were *fully proved*, yet held not sufficiently set out, and quashed.

The King and *Pullen* in *Salk.* not Law.

On this Conviction all that appears is, that the Licence being produced, which is a general Licence, and thereupon it appearing not to be granted at a general Meeting, they convict.

Mr. Justice *Probyn:* It does not appear to me by 2 *Geo.* 2. that other Justices could judge upon this Licence, for though it is voidable, yet not by them. Can two Justices, while a Licence is in Being, convict?

Mr. Justice *Chapple:* They say that the said *Bryan* was not then, and is not now, admitted at any General Sessions; but it not appearing, etc. seems to shew that there was other Evidence.

Chief Justice: I do not take this strictly such a manner of Jurisdiction as need be set out in the Licence, and if not, then the Conviction is wrong; the only Evidence is on Licence and Defendant's Confession, and thereupon it not appearing, etc.

Court thought it ought to be quashed, but it was adjourned.

In *Hilary* Term following Mr. Serjeant *Eyre* for the Defendant said, the Question is, whether anything appears in this Conviction to justify the Judgment given?

The Foundation of the Judgment is Appearing not to have been granted, etc. and that does not appear upon the Face of the Licence; and if any other Evidence, it should appear, and have been set forth, and no other Evidence is set forth in this Conviction. No Licences ever set forth the Circumstances attending Granting them; as in Licences that are granted to Recusants, it does not say that the Consent of the Bishop was under Hand and Seal.

If Licence otherwise granted, is only voidable (2 *Salk.* 674) not void, for it is a judicial Act, in a Case where the Justices had a Jurisdiction, and therefore till avoided, the Party acting under it cannot incur a Penalty.

On the other Side it was said, All the Evidence is not necessary to be set out, only so much as to warrant the Judgment given, "Appearing not to have been granted, etc. is a sufficient Reason for the Judgment."

This Conviction is upon Confession, and then no other Evidence is necessary.

Chief Justice: We have no Evidence to judge upon in this Conviction but the Licence, and I do not think that sufficient.

The Act does declare Licences granted contrary to that Act void, but that is not the Question here; the Question is, whether that must appear in the Licence itself? and I think not; here it does not appear that it was granted by Justices of the Division, as the Statute directs, nor is it necessary it should.

The Confession is only, that he kept an Alehouse under this Licence, and that Confession will not warrant this Conviction.

We must take this to be the whole Evidence that the Justices founded their Judgment upon, and as that is not sufficient, the Conviction must be quashed.

Hilary, Eleventh of *George* the Second.

The King *against* Haydock.

UPON an Indictment before Lord Mayor of *London*, as Conservator of the River of *Thames*, for a Nusance, removed into this Court by a *Certiorari*, and a Demurrer thereto, several Objections were taken for the Defendant.

First Exception: That the Authority of the Lord Mayor to take this Indictment does not appear.

Second Exception; That the Number of Loads of Bricks, the Day, Year, etc. are in Figures.

Third Exception; That there is no Addition to Defendant. *Stat. H.* 5.

Fourth Exception; That the River is a publick Highway, and no *Terminus a quo; Hil.* 3 *Geo.* 1. The King and *Hammond*, this last Exception was over-ruled, therefore not insisted upon; but as to the first Exception, *H. H. Pl. Cr. 2d Part* 166, 5. *Trem. Entr.* 200, 307, 265. and all the Precedents set out Authority in the Caption. *Salk.* 195. *Hil.* 4 *Geo.* 2. The King and *Stoughton.*

The Reason of returning Captions is to shew the Authority of the Court.

It was said this Court would take Notice of Customs of *London*, 1 *R. Rep.* 101, 5. 1 *R. Abridg.* 567. *Co. Entr.* 575.

When Customs are alledged, the Court will take Notice of them; but here is none alledged.

Lord *Hale* says the Caption must be returned. *Poulton de Pace* 176. *Hale's P. C.* 207. *pl.* 32. 1 *H.* 4. *c.* 12. By this Statute the Justices of Peace in the several Counties are Conservators in each County, and therefore the Lord Mayor cannot have such Office as Conservator of the River *Thames* in general, as he has claimed here.

Second Objection; H. H. P. C. 2d Part 170. 1 *Sid.* 40. *Duckett* and *Bland. Keb.* 19, 20. *Stile* 88.

It was said that *Roman* Figures were good before the Statute 4 *Geo.* 2. and now *English* Figures are the same; but the contrary appears by those Cases. The last Statute 6 *Geo.* 2. 14. does not extend to this Case, for that is in like manner as heretofore; but this never was allowed in Indictments.

Third Objection; Statute of *Hen.* 5. requires such Addition of Place and Profession. *Stile* 26, 109, 394. *Easter* 5 *Geo.* 1. The King and *Bowes.*

It was answered, that this was aided by Appearance, 1. *R. Ab.* 78. *pl.* 5. *Comb.* 70. *Sid.* 247. 2 *Rol. Rep.* 225. *Cro. Jac.* 609. but that cannot be, for before Appearance he can take no Exception.

If he pleads to Issue, I agree that is a Waiver of Matters extrinsick. *H. Hist. 2d Part* 176.

Demurring is so far from admitting anything, that it is insisting the whole is bad, for Matters extrinsick cannot demur, and that is proper for Abatement. 6 *Mod.* 198 1 *Salk.* 220.

No such thing as Demurrer in Abatement. 1 *Rol. Rep.* 176.

Mr. Serjeant *Hawkins* in Answer to these Objections: 17 *R.* 2. etc. authorizes Justices of Peace to exercise Conservacies in Counties, and then takes Notice that the King has granted such Power to Lord Mayor, which that Act confirms. 4 *H.* 7. 15 *Rast.* 97. the Recital of that Act, and gives the same Power in *Creeks* as in *Rivers.* 4 *Inst.* 250.

These are publick Laws of which Courts must take Notice, for it is a general Law extending to all the Kingdom; where their Proceedings are called in Question in another Court, and to be justified, I agree they must shew their Authority; but this is a Proceeding before himself in his own Court; therefore what Occasion to state it there, and only that Proceeding is removed hither. 1 *Rol. Rep.* 106. *Hob.* 86. All the Entries and Cases cited only shew that the Judges had a Jurisdiction, but do not state by what Authority the Courts were holden; and here it is said, that it was holden before the Lord Mayor, *Conservator*, etc. which shews he had Authority; which is like the Case cited out of *H. P. C.* where it is allowed, if he was said to be *Coroner* it would be good.

All the Precedents of Cases returned into this Court appear to be in this Form, and allowed good. *Mich.* 5 *Anne*, The Queen against *Coppin*, *Trin.* 6 *Geo.* 1. The King against *Smith*, The King against *Delamot*, *Mich* 5 *Geo.* 2. The King against *Brow.*

As all the Proceedings are in this Manner, it falls within the Reason of *Bewdley's* Case, 4 *Co.* 54.

Second Objection; That the Numbers and Dates are in Figures.

36 *Edw.* 3. 15. That Pleas shall be inrolled in *Latin*, upon the Question whether *Latin* Figures were Good; *English* Figures were held bad, but *Latin* good. 1 *Ventr* 56. The King and *Yeman*, *Easter* 11 *W.* 3. in this Court that Distinction taken and allowed; this is an *English* Proceeding, and by the same Reason *English* Figures good; and by the last Statute Figures are allowed in like Manner as in other Proceedings.

Hale's History says, that Numbers, etc. must be expressed in *Latin*, but not in Words at length, and so are the other Cases for Figures; that Chapter in *Hale* expressly relates only to Matters Capital.

Third Objection; The want of Addition. 1 *H.* 5. *c.* 5.

1. Whether this Proceeding be within the Words of that Statute.

2. Whether this can be taken Advantage of in Demurrer, or should have been pleaded in Abatement, for it goes not to the Writ; or if it is not now cured by Appearance; but if that is not sufficient, yet now he has imparled generally.

He might have made a special Imparlance which might have saved it. 7 *H.* 6. 39.

But now it is too late, for he has admitted himself to be the Person, so not within the Reason of the Statute, which was to ascertain the Person. *H. Hist. P. C. 2d Part* 75, 176. 1. *Ventr.* 236. 2 *Keb.* 143. 1 *Lutw.* 22. 1 *Sid.* 247. 35 *H.* 6. 36, 31.

Chief Justice: Hil. 3 *Geo.* 1. The King and *Hammond*, held that *Terminus a quo* and *ad quem* was not necessary in Indictments for Nusance in the Highway. As to the Objection, that it does not appear in the Caption by what Authority the Court was held, or that there was a Jurisdiction in the Person holding the Court.

No Case is cited to prove it necessary to shew the Authority, only Entries where it is so done; but I think it is not necessary, nor does Lord *Hale* say it is. As to the Jurisdiction, Lord Mayor may be Conservator, etc. and not have Jurisdiction to proceed by way of Indictment; and therefore, if it was not for the Precedents, I should think it of Weight. But if all their Proceedings have always been so, I shall think it too hard to depart from it.

As to the second Objection, I think no Difference between Indictments for capital Offences and others; and therefore think some Weight in that Objection; for Lord *Hale* is very strong as to that Point, and seems to exclude all Figures as well *Latin* as *English*, *Stile* 887.

That Case in *Ventr.* is a Civil Action. The Case of the King against *Yeman* is not strong enough to encounter Lord *Hale*.

As to the third Objection, thought it of great Weight.

The Statute says, for want of Addition the Party may take Exception, etc.

Trin. 10 *W.* 3. the Case of Sir *H. Bond*, Error assigned that Exigent had no Addition; and it appeared that Indictment had no Addition, and Outlawry reversed. But the Court told him he might except to the Indictment, but that it did not make it void, and it was not said that might plead in Abatement.

Pleading Not guilty waives the Exception.

It is said in *Sid.* and in *Comb.* that Appearance waives it, but that cannot be Law, for he may plead it in Abatement.

Where the Addition is false, it must be pleaded in Abatement; but want of Addition is different. The Court have quashed Indictments for want of Addition. *Stile* 26, 109. *Easter*, 5 *Geo.* 1. The King and *Cone.*

The Judgment upon Demurrer is not a final Acquittal.

I see no Reason why a Person may not as well take Advantage of it on Demurrer, as *Ore tenus* at the Bar.

Mr. Justice *Page:* They have, as appears by the Statute of *R.* 2. a limited Jurisdiction, but they have set out a general Jurisdiction; and if they have not the last, it is wrong.

Though upon the Indictment their Authority need not appear, yet upon the Return to this Court it must.

Where *Latin* Figures were good before the Statute, *English* Figures are good now; but if bad before, the Statute will not help it; but thought *Latin* Figures were good.

As to the third Objection, it may be taken Advantage of on Demurrer, for when it is moved to quash Indictments, the Court often bids them demur, but that is not to take any Advantage from them.

Of the same Opinion with the Chief Justice as to the first and third Exceptions.

Mr. Justice *Probyn* agreed with the rest in all.

See *H. H. 2d Part* 393. the Difference between Judgments upon insufficient Indictments and upon the Merits.

Mr. Justice *Chapple* of the same Opinion upon the first and second Objection.

But as to the third, thought no Difference between Matters extrinsick and intrinsick. Lord *Coke* says, by Appearance and Plea the Benefit is lost now Demurrer is a Plea.

1 *Sid.* 247. The King and *Warren.* I agree that cannot be taken generally, *H. Hist.* 176. upon Arraignment may except for want of Addition, for false Addition plead in Abatement, *Salk.* Lord *Banbury's* Case, Plea in Abatement, for want of Addition, and no Case cited of Demurrer for it.

A bad Addition is in Law no Addition. *Hawk.* 190. A man may demur at any Time before Judgment, but not plead in Abatement.

Hilary, Twelfth of *George* the Second.

Inhabitants of Stretford in Lancashire *against* The Inhabitants of Norton in Derbyshire.

SPECIAL Order of the Sessions sets forth, that Pauper was married to a Native of *Ireland*, and he had no Settlement in *England*, therefore they send her to *Norton* her own Settlement (he being run away).

Objection; During the Coverture, her Settlement is suspended, and she cannot be sent there though the Husband has none. *Henry* and *Marston*, 1 *Geo.* 1. *Shadwell* against St. *John's Wapping*, *Trin.* 9 *Geo.* 1. Agreed, that upon the Husband's Death her Settlement revives; but it appears he is living, though it is not known where he is, and he may return.

To which it was answered, that it was not necessary in this Case to adjudge his Settlement; but that is only mentioned as the Reason of adjudging her Settlement.

If after the Death of her Husband she may be sent to her own Settlement, it shews she has not lost it, and there is no Pretence that she is separated by this from her Husband; if she cannot be sent to this Place she can be sent no where.

Lord Chief Justice: It is now a settled Point, that by the Marriage her own Settlement is suspended, though the Husband has or has not a Settlement; for otherwise Justices might separate Husband and Wife.

Mr. Justice *Page:* From the Words of the Order it is to be thought that the Husband is alive; for as they were once married, it should be shewn that he is dead; and the Order was quashed by the whole Court.

Trinity, the Twelfth and Thirteenth of *George* the Second.

The King *against* The Inhabitants of St. Peter and St. Paul in Marlborough.

ORDER of Justices reciting that the Parish of the *Virgin Mary* in *Marlborough* is unable to maintain their Poor, therefore order that the Overseers of St. *Peter* and *Paul* shall rate and assess the Sum of sixty Pounds for the Year, etc. to be paid within fourteen Days.

First Objection; The rate ought to be only for a Month, not a Year.

Second Objection; The Justices are to assess and rate, and not the Overseers.

Answer; That the Power to raise Money in Aid of other Parishes, is different from taxing the Parish for their own Poor. 1 *Vent.* 350. *Salk.* 480. *Skin.* 258. *Comb.* 309.

Lord Chief Justice: As to the Objection, that it is assessed in a Gross Sum, and not rated on particular Persons, the Cases cited are full to that, and seems to me to be the better way.

There is no Case that they can order Churchwardens to assess, etc. and no such Authority in the Statute.

Mr. *Justice Page:* The Order is not for a Year, they have taken upon them to adjudge what is necessary to maintain their Poor for a Year, and that I think they cannot do.

It is like the Case of the King against Justices of *Middlesex*, upon the Order for raising Money for conveying Vagrants, should be confined to what is necessary at that time; for no one knows before-hand what the Charges may be.

Mr. *Justice Probyn:* The Justices must assess the Sum, and not the Churchwardens as they have ordered, which is delegating their Authority, and therefore ill.

Mr. Justice *Chapple* thought it must respect the Time of making the Order, that such Sum was then necessary; of the same Opinion as to Assessment; quashed.

Michaelmas, the Fourteenth of *George* the Second.

The King *against* Jones.

INDICTMENT against *Jones*, for not taking upon him the Office of Overseer of Poor. Demurrer.

Objection; This is not indictable neither at Common Law nor by Statute.

First, It appears he was appointed the Officer, and the Statute requires no Oath, therefore he becomes the Officer, and it is absurd to say he has not taken the Office, for he is so by Appointment without any thing further; and the Statute lays a Penalty for Neglect of Duty, which they may proceed for; but not for refusing the Office, as against a Constable who must take an Oath before he is a compleat Officer. *Carth.* 226.

Secondly, Not indictable as for disobeying the Justices Order, for they have only a bare Authority to appoint, which they have done, and he is an Officer by that Appointment.

Thirdly, This is an Appointment to execute for a Year, which the Justices have no Authority to make; but it should be till another is appointed; for if *Easter* falls within the Year, new Ones ought to be appointed; and it was so in Fact here.

Fourthly; 'Tis said the Jurors *of* the King, not *for* the King.

Mr. *Solicitor General on the other Side:* I agree no Indictment lies for this at Common Law; because there is no such Officer; but by the Rules of Common Law it will; for when a Statute requires a thing to be done or not done, a Breach of the Statute is indictable by the Rules of Common Law; here is a Neglect and Refusal to take the Office, which is confessed by the Demurrer.

Statute 43 *Eliz.* supposes the Person to take the Office, and neglects it; but the Penalty is not for refusing to take it. The Penalty is but twenty Shillings, which cannot be supposed to be an Excuse for not executing it. The King and *Lane*, *Mich.* 5 *Geo.* 2. Indictment lies for refusing the Office of Constable, and said that the Queen against *Lacey* in *Salk.* was mistaken. The Penalty is not a Bar to other Proceedings. The Oath makes no Difference.

It is a proper Method to compel Obedience to Justices Order, though the Authority is given by Statute, not by Common Law. The Justices can appoint only for a Year, and cannot till another is appointed. We could not proceed against him for Negligence in the Office before he had taken the Office upon him.

Lord Chief Justice: An Appointment for a Year is good; so held in the King against the Inhabitants of *Marlow*, *Trin.* 13 *Geo.* 1.

As to Jurors *of* the King, it would be well enough if it was so, but the Caption is *for* the King.

As to the principal Objection, it deserves Consideration.

The Statute says, "The Persons so appointed shall be called Overseers of the Poor."

Then the Statute gives Penalties for Neglect; now if the Penalties only relate to the Neglect, then I think the Refusal of executing the Office will be punishable another way.

I see no Reason for a Distinction between a Constable and Overseer, for when the Statute Commands a thing, the Refusing to do it is by Law indictable, and I think the taking the Oath makes no Difference.

Mr. Justice *Probyn:* They are annual Officers and are to be chosen Officers for a Year; Non-acceptance of the Office is a Breach of the Statute, and therefore indictable.

The Statute says *shall* be Overseers, etc.

The Oath of Constable is no part of his Appointment, but if he refuses taking the Oath he is indictable.

It is a Contempt of the Justices Order, and as such would be Indictable.

Mr. Justice *Chapple* agreed, and thereupon Judgment, unless Cause, for the King.

Easter, the Thirteenth of *George* the Second.

The Parish of Wansworth *against* the Parish of Putney.

SPECIAL Order of Sessions, Case stated thus, that the Pauper came to live there with ——— without any Hiring; and then his Master told him that if he stayed a Year and behaved well, he would give him a Livery and Wages the next Year; that he lived there one Year and four Months after, and then received a Guinea and half Wages.

It was insisted upon by Mr. Solicitor General, that this was no Hiring, because no Agreement on the Part of the Pauper. *Trin.* 3. *Geo.* 1. The King against the Inhabitants of *Horton* in *Staffordshire*, *Easter* 1 *Geo.* 1. *Peperharrow* against *Frensham*, *Mich.* 12 *Anne*, *Horseham* against *Shipley*, *Hil.* 5 *Geo.* 1. 2 *Salk.* 535. *Comb.* 445. *Mich.* 13 *Geo.* 1. The King against Inhabitants of *Pitminster*; *Easter* 3 *Geo.* 2. The King against Inhabitants of *Westwall*; *Trin.* 5 and 6 *Geo.* 2. The King against the Inhabitants of *South Cerney*.

Sir *Thomas Abney on the other Side:* A Hiring by a Wife, without Privity of her Husband, has been held good. In the three first Cases cited by Mr. Solicitor General, it was expressly stated, that there was no Hiring for a Year, and in the Case of *Westwoodhay*, Lord Chief Justice *Eyre* said, That a conditional Hiring was good; as when one says live with me a Week, and if we like, you shall stay a Year. Then the Executing the Service is an Agreement on the Part of the Servant.

Lord Chief Justice: It is objected, that here was no Assent of the Pauper to what his Master said; but the Question is whether his Service is not an Assent in Fact. *Hil.* 8 *Geo.* 2. *Chipping Wycomb* against *New Windsor*, is the strongest Case in this Point.

I think this a good Hiring, when the Conditions are performed; and if we are too strict upon the Words of Contracts, we should avoid many Settlements.

Mr. Justice *Page* was of Opinion the first Year was only upon Liking, and that the Hiring did not commence till the second Year.

Mr. Justice Chapple: It seems to me that the Pauper had Liberty to stay or go away during the first Year, for he was under no *Contract*, but that was to commence the second Year.

This Case was argued again in *Michaelmas* Term in the 15th Year of King *George* the Second, and insisted that a conditional Hiring was good; as in the Case of the Inhabitants of *Lidney* against the Inhabitants of *Stroud*, *Trin.* 6 and 7 *Geo.* 2. the Hiring was for a Quarter of a Year, and if *she and her Master* liked each other, to stay a whole Year; she entered upon the Service, and continued in it a Year; and that was held to be a good Settlement.

Trin. 13 *Anne*, *Missenden Parish* against *Chesham*, *Hil.* 8 *Geo.* 2. *New Windsor* against *Chipping Wycomb*, a Maid was hired at the Rate of five Pounds a Year, and Liberty to part on each Side on a Month's Warning or a Month's Wages, but she living out the Year, it was held a good Settlement.

The other cited *Comb.* 445. living with a Person without being hired, gains no Settlement.

Lord Chief Justice observed, that it was not stated in the Order, that the Pauper was a Servant to Mr. *Falkner*, only that he lived with him, but taking it for granted that he was a Servant, then the Question is, if here is a good Hiring.

A general Retainer, without mentioning any Time, is for a Year. *Co. Lit.* 47.

I think this a good Hiring for a Year, for it must be considered according to the usual Methods of such Contracts as the Court did in *New Windsor* against *Wycomb*.

Mr. *Justice Page:* I agree an express Hiring for a Year is is not necessary, but if it is according to the usual Method, it is sufficient; but I doubt, upon the State of this Case, if any Hiring for a Year, the Order not saying he lived with Mr. *Falkner* as a hired Servant; therefore it is uncertain when the Year is to commence; for if the two Months preceding this Hiring, is not to be taken in, then only ten Months; and it is uncertain whether he was hired before, or not.

Mr. Justice *Chapple* agreed with the Chief Justice, that it was a good Hiring for a Year,

and that it should commence from the Time of the Declaration made by the Master; but it was referred back to be more fully stated at Sessions.

Hilary, Fifth of *George* the Second.

The King *against* Franklin.

MOVED to set aside the Verdict on an Information for publishing a seditious and scandalous Libel on the following Exception.

That the Jury had no Authority to try the Cause; Issue was joined in *Easter* Term last, *Ven.* returned in *Trin.* Term, and *Distringas* returned in *Mich.* *Nisi Prius* at *Westminster*. In *Trin.* Term a Motion for a special Jury, and the Freeholders Book brought before the Master to strike a Jury, and by the Rule it is confined to be tried at the Sittings after *Trin.* Term; then eleven of the Jury appeared, and it went off for Default of Jurors, and upon that *Distringas* an Entry *quod vic. non misit breve.* Then a new *Distrin.* returned the first Return of this Term, *Nisi Prius* after *Michaelmas* Term; but those sworn under the Rule to try the Cause after *Michaelmas* Term, are not the same as were sworn before; and then the Jury were brought into Court, *and other Persons named*, etc. By the 3d of *Geo.* 2. for regulating Juries, a positive Direction is, that no less than 48 Jurors, excepting in Trials at Bar, or the contrary be directed under the Hand of the Judge, or a Rule to the contrary; then the Question is, whether this Rule will take it out of the Statute? for the Rule is *to try it at a Sessions after Trinity Term*, and to try it at another Sessions is contrary to the Statute. The Jury has no more Power to try at another Day not mentioned by Statute, than the Judges of *Nisi Prius*, 11 *H.* 6. *fo.* 11. who do not try by Force of the Statute, but by Force of the Writ of *Nisi Prius;* if Trial be at an uncertain or impossible Day, the Trial is void, and Cause to reverse or arrest the Judgment. 1 *Ven.* 296. 3 *Keb.* 655.

The whole Power of Trying by *Nisi Prius*, arises by the Writ, yet that Authority so given, must be pursued strictly, as at an uncertain Day, or an impossible Day; and the Trial at another will not serve, though there had been an Authority given; for it is positively confined to the very Day. 1 *Ventr.* 58. Therefore the Day of Trial being prefixed, for the Accident mentioned it was not tried at the Day, yet in Supposition of Law, the Trial must be at the very Day; yet a Jury confined to try a Cause at a Day certain, by Writ of *Nisi Prius*, have no other or larger Power to try the Cause than the Judge; all delegated Powers are strongly restrained by Rule. The Jury struck are to try the Cause after *Trinity* Term, and being tried after *Michaelmas* Term, and whereas the Statute appoints forty-eight, here were but twenty-four returned, and those different from the former Jury on the first Trial. 7 and 8 *W.* 3. *c.* 32. for settling Trials, special Juries were very seldom had in this Court before the Act of Parliament for Special Juries, (except by Consent) but in the Common Pleas, Rules for Trials by Special Juries are made out in general, and if the Cause is not tried the next Assizes, the Parties do not try it before Application is made a second time to the Court, and Rules were read to that Effect; therefore the Jury had no Authority to try it. This Defect is an Error not to be taken Advantage of by Challenge or otherwise; and compared this to the following Cases; the *Venire* is to return twelve lawful Men, yet the Method practised is to return twenty-four, and if less than twenty-four appeared, and the Cause was tried by a full Jury, this has been Error; though in Civil Cases the Statute of *Eliz.* aids it. *Savile* 124. But in criminal Cases it is not aided, but is Error. Now here is a positive Law, that no less than forty-eight shall be, (5 *Co. Gardiner's* Case) in the other Case which is grounded on Usage and Custom, it was Error to return less than what had been usually practised. *Cro. Car.* 278. And therefore the Defendant's Case is much stronger, as not being comprehended under the Words of the Statute. 1 *Roll's Abr.* Tit. *Error fo.* 800. §. 8. the Panels are the same, but the Jury are not the same who were sworn. Admitted no Rule but that in *Trinity* Term; one Rule between *Pierce* and the Bishop of *Chester*.

Mr. *Fazakerly:* This Trial is upon the Authority of the Rule, for it is not under the general Authority of the following Clause, but the Construction. The Rule is what must be principally considered, the Authority of the Sheriff is determined and executed by a Return

of a Jury after *Trinity* Term, and being so determined, he acted without Authority; and though the Persons returned are the same, yet it is a different Return, and may be by different Persons, and is a Mis-trial, and ought to be set aside. On the late Act the Defendant had a Right to be tried by the balloting Clause, and if the Prosecution of the Crown has not been fully followed, then it is wrong; for by the Rule *this* Trial is confined to be tried by *this* Jury after *Trinity* Term; and the Jury having been then sworn, and the Trial gone off for Default of Jurors, that Rule is now come to an end. Sheriffs are changed between *Trinity* and *Michaelmas* Term. The Cases of an Award and Inquisition, *Salk.* 96. *Layer's* Case, a Day of Execution on that Day Fortnight, and afterwards reprieved to a Day subsequent to the first Day; then Motion for a second Rule on the 27th of *March*, and afterwards reprieved to the seventh of *May*, and then Motion for a third Rule. In Cases of Views, determine at the next Assizes.

To all which it was answered, for the Prosecution, that the Plea in *Easter* Term, *Venire* returned first Return *Trinity* Term, then *Distringas* returnable in *Michaelmas*, last *Distringas* returnable *Octob. Hil.* To consider the Dispute on the Statute of this King; the Exception is to the introduction of the Clause, the Rule is of no Weight, it only intends the Cause shall be tried that Sittings; but after the Jury is struck, the Proceedings are continued over. Suppose it had been to be tried at the first Sittings, it was not to be supposed an Application was necessary for a new Trial. In Trials at Bar the Rules are drawn for the Trial, and the Issue joined in that Cause such a Day; yet if for want of a full Jury, or other Accident, the Cause goes over to another Day, or another Term, there is no need of a fresh Rule; The King against *Reading; Hotworthy* and *Johnson*, 12 *Geo* 1. *Bullock*, 13 *Geo.* 1. Causes tried at Bar, none of them tried the same day as appointed, but went off to another Day.

As to the Power to try the Cause, that arises from the Rule; and if it is tried at another Day it is tried without Authority.

The Authority of the Jury arises from the King's Writs, which are continued; and though the Sheriff has once executed his Authority, that is not by Force of the Rule, but by Virtue of the Writ, let it come to him as often as it will.

The Rule in a Capital Case, is not parallel to that of a Jury *Process;* because it is Authority, at least it is a Caution for a Sheriff not to execute a Man after a Rule is out; so as to the Views, the Rule is the Authority.

As to the Course of *Common Bench*, it is extraordinary to prove the Course of one Court by that of another; and to prove that, they have only produced one single Instance, and they have not shewn that a Special Jury then was struck under the first Writ. Suppose this to be the Method of that Court, it is to be accounted for by the Statute 7 and 8 *W.* 3. *c.* 32. for where a *Venire facias* is to be taken out, and directs the Form, then it is necessary to have a Special Jury, and if he takes out a new *Venire facias*, it makes an End of his Special Jury; but the Act of *W.* 3. does not Extend to the Sittings in *London* or *Middlesex*, nor to the Causes of the Crown, but to the Causes tried at the Assizes only; and if a Cause be to be tried at the Sittings, and goes off, a new *Venire facias* is never taken out, but a *Distringas* is, because of a new Day at *Nisi Prius*. The King is not bound by general Words of an Act, nor does the Statute of Jeofails extend to Crown Causes, unless in the Cases of Revenue, by the Statute 4 *Ann.* and by the Statute of Frauds, the Property of Goods is bound from the Delivery of the Writ to the Sheriff; but in the King's Case the King against *Meredith*, *Trin.* 13. *W.* 3. for Perjury, on an Information, *Easter* 12. *W.* 3. Issue in *Trin.* Term, and the Proceedings continued on the *Distringas*, as in this Case there was a good Jury. In all Causes of the Crown in the Exchequer, no Instance of a new Trial, or new *Venire facias*, but Continuances are entered on the *Distringas;* The Statute of this King makes against the Defendant about the Directions given in Crown Causes for Trials of them. As to the Time of taking advantage of this, the Defendant is too late, for he challenged one of the Jury, and submitted afterwards to take a Trial.

Mr. *Solicitor General:* No conditional Words in the Rule, nor any where else, that the Cause should not be tried at any other Time; but it does not restrain the Cause from going over to another day or another Time.

Mr. *Reeve:* No Exception has been made to the striking the Jury before the Master,

but every Step here taken has been made regular, and the Jury there struck has been regularly returned by the Sheriff. Suppose a Rule is granted that the Issue may be tried at the next Assizes, which being conditional Words, if not tried at the next Assizes, yet if tried at different Assizes, the Proceedings shall not be set aside for that, 3 *H.* 8. *c.* 6. *de Circumstantibus*, 4 and 5. *P.* and *M. c.* 7. where Plaintiff and Defendant, Tenant or Demandant are named in a Statute, it does not extend to the Crown; this is declared by Judgment of Parliament.

This is properly a Challenge to the Jury, and ought to be made at the Trial, and founded on a Fact collateral to the Record.

An Array cannot be challenged after a Challenge to the Poll, and the Rule only directs how the Jury shall be returned; but the Rule cannot order how the *Venire* or *Distringas* shall be awarded; and the *Venire* is the Foundation of a *Distringas in infinitum*. See the Clause at the End of the Statute 3 *Geo.* 2.

After the Attorney has made his Election, the Jury must go on to try the Cause at Law, and compared it to the following Cases. 1. *Rol. Abr.* 801. *Yelv. fo.* 23. 1 *Vent.* 296. 3 *Keb.* 655. 2 *Vent.* 58. 5 *Co.* 37. *Cro. Car.* 278. *Cro. Eliz.* 574, 895. *Yelv.* 15. But as to the Time of Making this Objection, it should be at the Trial.

Mich. 13 *W.* 3. In the King's Bench, in an Action for Words, and Motion for a good Jury, and the Cause tried by a Common Jury, and moved to set aside the Proceedings; and held by the Court, that the Party having made his Election to try the Cause in that Manner, had waived the Benefit of the Rule, and the Proceeding stood.

In the same Term Lord Chief Justice gave the opinion of the Court to the following Effect.

The Objection for the Defendant was, that the Jury have no Authority to try the Cause.

There is no Irregularity in the Proceedings, this is not within the Act; not less to be returned than forty-eight, or more than 72, unless in the Cases excepted; as on a Trial at Bar, or by the Rule; and therefore the Fact as to this, stands as it did before; the Persons struck are not to serve, but are only to be returned. As to the Rule confining it to be tried at a day after the Term, which was said to be an Objection, the Judge and Jury try the Cause by *Distringas;* and as the *Distringas* is returned, it must be carried on by Continuance; and a new *Venire* could not have been had. It appeared upon the Face of some of the Cases cited, that where twenty-three were returned it was wrong. *Cro. Eliz.* 434.

Style 22, 23. so far Corrects the Case in *Allen* 18, as to say you must have the first Jury, and need not have a new Jury; the Statute 7 *W.* 3. does not extend to the Cases of the Crown. As to the Practice of the Common Pleas, every Court has different Methods of Proceeding, and the Practice of that Court is the Law of that Court; and that Rule is not an Authority to try the Cause. As to taking advantage of this at the Trial, we do not determine it now. The Defendant was fined one hundred Pounds and imprisoned for one Year, and till he pay it, and to give Security for seven Years, *viz.* himself in one thousand Pounds, and his two Securities in five hundred Pounds a-piece.

Easter, Eighth of *George* the Second.

The King *against* The Mayor of Derby.

THIS came on upon a Return to a *Mandamus*, to restore one *Sadler*, a Burgess of *Derby*, to his Freedom again, who had been amoved.

And it was insisted, that the Return is insufficient.

First; That there is not necessarily set out, that which makes a legal Certainty; that this was so near as to disturb the Common Council, and the Court cannot intend this by Collection or Inference.

Secondly; It does not appear that *Sadler* was any way the Occasion of this Disturbance.

Thirdly; Supposing *Sadler* was amongst them, yet it does not appear that this Company met on Purpose to disturb the Common Council.

Fourthly; It is said to be in the sight and View of the Mayor, etc. it might be so, and yet not so near as to disturb them.

Fifthly; It does not appear there was any Court.

Sixthly; It ought to appear what the Acts were for which they amoved him, that the Court may judge of them; and also to specify the Names of the Constables that were assaulted, for these, as well as the Name of the wrong doer, should be set out. *Show.* 389.

And this should be the rather, because these Facts are not traversable.

Indeed in Indictments for stealing Goods, etc. of Persons unknown, it is of Necessity. 2 *Lev.* 208.

But here the Corporation must know their own Officers, who were Constables, and cannot come within that distinction.

Quære, Whether the Order of Disfranchisement ought not to be under their Common Seal? It is one of the Exceptions in the Case of *Wilton,* 5 *Mod.*

It is uncertain for which of these Facts he was Disfranchised, therefore if one of them is not such a sufficient Cause, though the rest should be good, it will be insufficient.

Supposing these Facts should be thought all good, yet here is no precedent Conviction, and nothing on this return is sufficient to amove.

Most of these Acts are a sufficient Cause to bind him to his good Behaviour, but not to disfranchise. *Bagg's* Case 11 *Co. Palm.* 157.

It will be difficult to show how this affects the Corporation as a Body, or what Part of his Oath it is a Breach of. *Style* 477. That was upon a Riot in the Court, and after the Court was adjourned, snatching of the Books and making their own Entries. The Court held this a sufficient Cause; but otherwise, unless in Court, there must be precedent Conviction. Case of *Wilton* in 5 *Mod.* and *Salk.*

The Queen and *Lane,* The Queen and *Perrot* as cited before. But the Case of *Carlisle* began *Mich.* 8. *Geo.* 1. there the only Objection relied on was, that the Amoval was wrong for a precedent Conviction.

The Court was divided; but Chief Justice *Pratt* was strong of Opinion, there ought to be Conviction precedent; and the Case in *Style* was allowed to be Law. So in *Townsend* and *Thorp,* the Court thought, the Ecclesiastical Court, though it had a Jurisdiction of many of the Offences, yet there being an Indictment at Law, the Court prohibited them as to that, till that was tried.

True Distinction, where the Offences merely corporate are properly triable before their own Domestick Judges.

In eo punire in quo delinquitur; but where it is of a publick Nature, proper to be tried in the King's Courts; as these are Pleas of the Crown, proper to be tried in the King's Courts, unless there was some particular Custom to try them in these Inferior Courts; it is not the legal Method, and so said by Chief Justice *Glynn* in *Style,* and adjudged.

Sir *William Chapple on the other Side;* In Support of the Return, on the 14th of *October* this Disturbance was, it is alledged to be in View of the Mayor, etc. and to their great Disturbance.

Not necessary to name the Persons assaulted.

As to Summons, they continued together two Hours, which was a sufficient Time to wait for him.

Disfranchisement not necessary to be under Seal, when done by Vote and Entry in Books.

Lord Chief Justice: Perhaps the same Body have not the Power of Disfranchisement, that have Power over the Books.

Sir *William Chapple:* The whole Offence is set out, as to the Precedent Conviction, where it is of a publick Scandalous Nature, admitted it must be so; but not necessary in Offences that immediately concern Corporations assembled in their corporate Capacity. The Case of *Wilton,* for erasing the Books, was a single Act. It does not appear the Body was injured, therefore Conviction proper. *Comb.* 398.

Haddock's Case, *Raym.* 435. Here was an Attempt to hinder an Alderman from coming to the Assembly. *Carth.* 173.

To this it was replied, The thing relied on in the Return is, that it is alledged to be to the Disturbance of the Common Council, which strengthens the Objection, that it must, on the

Return, necessarily appear to the Court it was so near as to disturb them; if this had been in a Room below to the Corporation, it might have been some Reason; but here the Tumult was in the Street adjoining to the *Guildhall*, though this may be traversed generally, yet so many Constables cannot traverse particular Facts.

It is returned that they did attempt to hinder an Alderman from coming to the Assembly; a mere attempt is no cause of Amoval. *Bagg's* Case.

In the Common Case of Declaration on several Counts, and intire Damages; if one is bad, the whole falls to the Ground; so here the Case of *Raymond* was an Offence in Court. No foundation to apply all the Facts to *Sadler*.

Lord Chief Justice: I believe this Question will turn on this Point, which is a Case at Common Law mixed with an Offence of a private Nature; whether a Conviction precedent is necessary? The Court was divided in the Case of *Carlisle*, therefore it is proper to be considered.

It is a Doubt with me whether a Conviction at Common Law will determine the whole; yet a Man may be acquitted at Law, and punished by a Corporation.

Therefore whether there should not be a precedent Conviction?

Easter, Eighth of *George* the Second.

The King *against* Messenger.

SIR *Thomas Abney* moved to Quash an Order of Bastardy.

First Objection; It does not Appear in what County the Liberty of the *Tower Hamlet* is.

Second Objection; To what Place the putative Father should appeal.

Third Objection; Two Justices do not appear to be Justices of the Liberty, but only residing near the Liberty. *Cro. Car.* 210. 211.

Fourth Objection; Said by the Examination taken upon Oath, and not said before whom.

Fifth Objection; The Woman ought to have Repose and Ease for a Month, whereas the Order was made the 14th of *January*, and the Child born the 8th.

N. B. It was Liberty of his Majesty's Tower of *London*.

Lord Chief Justice: The Liberty of the Tower of *London* has a distinct Commission of the Peace, and so has the Liberty of the Dean and Chapter of St. *Peter's Westminster;* and they never mention the County of *Middlesex*.

N. B. The Words of 18 *Eliz.* are at the General Quarter-Sessions in that County. On that Exception Rule to Shew Cause.

In the same Term Mr. *Clark* shewed Cause, by saying that Justices of the Liberty is well enough, and no Occasion to mention County; but general Jurisdiction is also given to the Justices by the Statute of Bastardy.

A County is never mentioned unless Jurisdiction.

Sir *Thomas Abney:* The true Ground is, that as an Appeal is given to Quarter-Sessions, the Party should know of what County two Justices are, that he may know where to go for Redress. Indeed if the Sessions of the Tower had done it originally, that had been good; but two Justices must set out the County. *Hellier* against the Hundred of *Penshurst*, *Cro. Car.* 111.

Lord Chief Justice: Here are two Liberties, the greater that of the Tower of *London;* and a Lesser, that of the *Old Artillery Ground;* which is a Subdivision or Vill within the greater Liberty; and they have said they are Justices residing near the Liberty in which the Child was born; which is the same as Parish, and good.

As to the Objection, that the Party cannot tell where to go to Appeal, is of some Weight, and would be bad on 18 *Eliz.* if Jurisdiction is not given to the Liberty, by 3 *Car.* 1. and Appeal to them.

The same Term.

The King *against* Taylor and Neale.

MOTION for an information against the Defendants, two Justices of *Devonshire*, for Making an Order on one *Nicholas Mould*, adjudging him to be the putative Father of a Bastard Child, without summoning him; and also for refusing to hear his Witnesses.

Sir *Thomas Abney* shewed Cause, and said he was summoned by Sir *George Chudleigh*, a third Justice of the Peace, to appear at the next monthly Meeting of Justices; that then the Mother came, and his Witnesses, but *Mould* not appearing, the Justices would not hear the Witnesses; because the Man himself was not there. But upon Examination of the Woman, they then made this Order, why he gave Notice of Appeal to the Sessions and did not appear there? Order properly confirmed.

Lord Chief Justice: Supposing the Man was summoned, and did not appear, the Justices are not then bound to hear any Evidence for him; and this Court will not hear any Evidence in behalf of a Person who should attend here and does not.

By the Court: The Man did not attend at the next Sessions as he ought to have done.

Lord Chief Justice: It does not appear to me that these Justices have acted criminally, but on the contrary this Complaint appears to be groundless. *Mould* appeals to the Sessions, and deserts that Appeal, and does not complain here till *Cole* the Constable, who was to serve the Summons, had been dead a Year.

The Justices also swear they saw a Summons under the Hand of Sir *George Chudleigh*, which a third Justice might grant. Besides it appears on Affidavits, that *Mould's* Father and Mother attended to give Evidence for him, which shews he had Notice, though not strictly, that he was summoned, yet lying by until after the Death of the Constable, strongly implies it.

Indeed if any real Excuse had been made, as that the Man was Sick, the Justices should have deferred it; but no Reason at all here to do it; and thought the Rule ought to be discharged with Costs.

These Justices have no more to do than to inquire into the Probability of Summons, and they swear expressly that *Cole* was duly sworn to the Service of the Summons; therefore it must be understood, that there was a proof actually made of the Service of the Summons. Rule discharged with Costs.

Trinity, Eighth and Ninth of *George* the Second.

The King *against* Justices of Westmoreland.

ORDER of two Justices of the Borough, for removing a poor Family; Appeal to the Sessions of the County, at which only four Justices being present, who were equally divided, so no Determination was made, nor the Appeal adjourned. *Mandamus* directed to all the Justices of the County in general, to proceed on the Appeal.

Return, that at such a Sessions Appeal was lodged, and that four Justices only attended, two whereof were interested in the Question, the other two were divided in Opinion.

This was set out in the Paper; and it was agreed on all Hands, that the Return was very odd, and not to be supported.

Sir *Thomas Abney* for the Justices said, That the writ of *Mandamus* was bad, and ought to be quashed; for that it does not appear that the Appeal was before them, and that for ought appears, the *Mandamus* requires the Justices to do an impossible thing, *viz.* to proceed on an Appeal not before them, since the Appeal being lodged at a former Sessions, was not continued over to the Subsequent Sessions, and therefore was by Law gone.

Mr. *Robinson on the other Side said*, That it was not usual in Writs of *Mandamus* to set out Continuances; and that if any such thing had happened as alledged, the Fault was in the Justices, who ought to have adjourned the Appeal, till by the coming of more Justices the Matter might have been determined.

Lord Chief Justice: The Question is, Whether there is a Possibility of the Justices Proceeding in this Appeal; thought if there was not, as there would be a Failure of Justice in this Respect, an Information ought to go against the Justices who were at the Sessions; said he should be glad to know if it was usual to set out Continuances in these Writs of *Mandamus.*

Sir *Thomas Abney* said, In the Case of the King and St. *Mary's* in *Shrewsbury*, the Court was inclinable to make a Rule on the Town Clerk to return Continuances; but the Court determined nothing finally in that Case, but that they submitted to amend the Return.

Lord Chief Justice: Let this Case stand over; and recommended it to Sir *Thomas Abney* to advise his Clients to proceed on the Appeal, or Return Continuances; and seemed at length inclinable, if they did not comply, to grant a peremptory *Mandamus.*

Michaelmas, the Ninth of *George* the Second.

The King *against* Marrow and another.

INDICTMEMT for a forcible Entry before Justices of *Middlesex*, by one Jointenant against another; and being removed into this Court by the Prosecutor, Mr. Serjeant *Hawkins* moved for Restitution in this Court, upon the Statute of 8 *H.* 6. which he said this Court could award as well as the Justices could. 8 *Ed.* 4. *fo.* 9. *pl.* 5, 19. 10 *H.* 7. *fo.* 27. *pl.* 6. *Palm.* 419. *Lutw.* 224.

Lord Chief Justice seemed to think that one Jointenant could not maintain a forcible Entry against his Companion, but ordered them to shew Cause.

Mr. Serjeant *Hawkins* desired his Affidavit might be filed. But Lord Chief Justice said, we cannot go out of the Record, and the Discretionary Power by the Statute must be a legal Discretion.

In the same Term Mr. *Kettleby*, to shew Cause why there should not be a Restitution in this Case, two Acts which expressly declare that after three Years Possession, no Restitution, produced an Affidavit, that Defendant had been in peaceable Possession of the Premisses from the first of *May* 1731. to the Time of the Indictment.

31. *Eliz.* 8 *H.* 6. Note the Affidavits did not say the other Jointenant was not in Possession; 5 *R.* 2. *c.* 7 and 15 *R.* 2. *c.* 2. both Defective.

8 *H.* 6. *c.* 9. §. 3. gives Power to the Justices to inquire by a Jury of the Force, and if found, then the Justices to put in Possession; this is the Act on which the Motion is grounded. But this is not the Case; this is not the finding of a Jury summoned on purpose to view the Force, but the grand Jury who have found an Indictment for a forcible Entry.

Lord Chief Justice: Many Cases are to the Contrary, that Restitution may be on an Indictment found of a forcible Entry; and so is my Lord *Hale's* Opinion.

Mr. *Kettleby*, *Co. Litt.* 199, *b.* one Jointenant against another cannot maintain an Action of Trespass.

As to the Case the 8th of *Edw.* 4. *fo.* 9. *pl.* 5, 19. not to this Purpose, but at the most it is only that two Judges were of Opinion that an Action on the Statute of *H.* might be brought by one Jointenant against his Companion; and the Case of *H.* 7. is only the Opinion of *Bryon.*

Trin. 14. *Ed.* 4. *fo.* 8. *pl.* 16. 'tis expressly said to be held by all the Justices, that no Action would lie on any of these Statutes.

As to the Case, *Lutw.* 224. *Bearley's* Case, Exception, that a Person cannot enter into the Moiety of a Manor; but held otherwise by some, though for a Reason he could not understand. As to the Case in *Palm.* 419, Exception to an Indictment for an Entry into a Moiety.

Lord Chief Justice: You need not labour on that, for it does not appear it was by one Jointenant against another.

Mr. *Taylor: Dyer* 122, 123. Shews this to be discretionary in the Court, to grant or not to grant this Writ of Restitution, and hoped here was not sufficient laid before the Court to induce them to exercise that Discretion; here has been no sort of Delay by the Defendant; the Indictment was but just found, and removed hither by the Prosecutor himself.

Trespass will not lie by one Jointenant against another, but admitted an Ejectment on an actual *Ouster;* hoped no Delay in the Defendant, and that the Court would not interpose.

Mr. Sergeant *Hawkins: Dyer* 122. *pl.* 26. 1 *Keb.* 343. The King and *Bruges* is in Point, *Raym.* 85. *Hale's P. C.* 141. all cited to shew the Discretionary Power of the Court, and that it was Delay in the Party. *Co. Lit.* 199.

Tremain 325. Precedent of Writ of Restitution, it is no *Ouster* of the other, it is but Reseizing the injured Party.

As to Mr. *Kettleby's* Case, it may be that an Action will not lie for the mean Profits by one Jointenant against another, because they may receive the whole Profits; but this is an Indictment for a *Tort.*

Affidavit produced by the Prosecutor of an actual *Ouster*, by shutting up the Doors, and turning out the Servants. *Cro. Eliz.* 915.

Mr. *Taylor:* As to the Case 14 *Ed.* 4. cited by Mr. *Kettleby*, *Fitz. Nat. Bre.* is quite contrary. As to the Case in *Litt.* it is directly against him, and *Salk.* 392. 2 *Salk.* 423.

As to Time of Pleading, the Court will consider themselves as if they were the single Justice; where, unless a Plea be pleaded instantly to bar Restitution, immediate Restitution is awarded.

Chief Justice: If the Defendant would quash the Indictment for Insufficiency, or would plead the three Years Possession, that might be a Reason for the Court to delay it, but thought the bare Traversing the Force not sufficient.

As to the Question, Whether an Indictment will lie for one Jointenant against another, no Cases unless the Case in *Fitz.* thought an Indictment will lie, but it should be for a peaceable Entry, and forcible Detainer; and if the Defendant thinks fit to rely on that, he may demur.

As to the Possession for three Years, did not think that sufficient in this Case; because the Affidavit offered says nothing against the Possession of the Companion; but the principal Point is, as to the Rules of pleading in this Case. As to Indictments for Misdemeanors, the Parties have till the next Sessions to traverse; so in this Court where they come in by *Certiorari*, it would be extremely mischievous if it must wait till the Next Term; the Acts certainly direct a speedy Remedy, but no Case cited, and desired to be certified by the Clerks, or that Precedents should be looked into; thought if the Precedents would warrant it, they should plead instantly.

Mr. *Justice Page* said, he should be glad to know how the Precedents had been; thought the ordinary Traverse should not be allowed; but the Party should plead so as to try this Term.

Mr. *Justice Probyn* thought the Case of the King and *Bruges* did in some Sort settle this Point; Plea to be offered on Motion for Restitution, on Plea Court foreclosed, which was agreed by the Court; was willing to the Search of Precedents; but thought if the Precedents should not come up to it one way or other, thought they should be confined to plead so as to try at the Sittings after Term.

Mr. *Justice Lee* thought the Indictment for a forcible Entry would lie on an actual Expulsion, that the Case in *Fitz.* seems to warrant this. As to the Time of Pleading, all the Books leave it to the Discretion of the Court, which will be nothing if they are confined to the same Rules in this Case as in others; the Case in 1 *Keb.* seems to point out the manner of preventing the Court's Exercising its Discretion; inclined to grant immediate Restitution, as the Defendant offered nothing to *oust* the Court of their Discretion.

Lord Chief Justice said, he should be glad to know how the Precedents were; said if there were no Precedents he should be for settling the Rule for the Time to come, to plead *Instanter*, to avoid the Delay in ordinary Cases. Go over for search of Precedents.

Mr. Serjeant *Hawkins*, *Savill* 68. Court will not grant Restitution without hearing the Parties. At another Day, without any Fresh Cases cited, the Lord Chief Justice declared they had consulted together, and put it on the Party to plead in two Days, and take Notice of Trial within Term, otherwise a writ of Restitution.

The same Term.

The King *against* The Justices of Middlesex.

MR. *Morley* took Exceptions to an Order for raising the Sum of eight hundred Pounds for passing of Vagrants.

First Exception; It does not appear the Order was made on due Presentment.

Second Exception; Not said such Rates have usually been made.

Third Exception; That the Accounts should be audited by the Justices.

Fourth Exception; Not under Hand and Seal, as the Statute of *W.* 3. directs.

On shewing Cause it was answered, that this should be considered as a Poor's Rate, and then no *Certiorari* lies. *Cratmarsh* and *Utoxeter.*

As to the First Exception, it is impossible to execute that Law Literally; because the Grand Jury of *Middlesex* never appear where Justices of Assize and Gaol-Delivery sit.

That this Order is grounded on 14 *Eliz.* and not on the subsequent Statute 11 and 12 *W.* 3. or the Statute of *Ann.*

As to the Second Exception, the Acts of Parliament do not require it.

As to the Third Exception, did not know on what it was grounded, and therefore gave no Answer.

As to the Fourth Exception, it is not grounded on the Statute of *W* 3. but on the 14th of *Eliz.* Order not in Court, therefore the Motion was stayed.

In *Hilary* Term following, the Lord Chief Justice delivered the Opinion of the Court to the Effect following.

Order on the Statute of *Ann.* by which all the Vagrant Acts are reduced into one; removed into this Court, where it had been argued; the Order was for a Rate on the several Parishes, and Assessment specifying the Particular Sums which the Quarter-Sessions thought requisite; and ordered that the Chief Constables forthwith, after their Receipt, pay the same to *J. H.* the Treasurer, and all future Treasurers, to be applied as the Justices by Order shall direct.

12 *Anne, Sess.* 2. *c.* 23. directing for the Charge of passing Vagrants, *prout* 13. §. the Justices in Quarter-Sessions to raise Money as for County Gaols and Bridges. *Sect.* 14. gives further Directions.

First Exception; No Presentment of the Grand Jury.

Second Exception; Not under the Hands and Seals of the Justices.

Third Exception; That it is to raise eight hundred Pounds *in Gross.*

It was argued as to the first Exception, the Statute 11 and 12 *W.* 3. Order for Assessment, and 1 *Anne* directs Assessments upon Presentment to them made, from whence inferred Presentment necessary by Reference.

It was answered, not necessarily referred to these Acts, but to the Statute 14 *Eliz.* but this is not the true Answer, for that only regards poor Prisoners in County Gaols.

But we are of Opinion the Reference ought to be the aforesaid Statute 1 *Anne*, and so it may appear by 5 *Anne.*

Suppose this Act could refer to the Statute of *Eliz.* yet this Order is not good, because there it is confined to such a Sum Weekly. Yet all are of Opinion a Presentment of the Grand Jury is not absolutely necessary; if the Legislature had so intended, the Presentment would have been specified. The Presentment not applicable, the 11th and 12th *W.* 3. and 1 *Anne* about *Bridges*, neither of these Presentments will serve the Purpose; the Money is left to be disposed of at the Discretion of the Justices.

Justices shall Cause the Money to be raised when Need shall be; besides, what use would a Presentment be of? the Justices have by the Act a Power to determine the *Quantum*, and then a Presentment is of little Use by the Grand Jury.

The Repair of Gaols and Bridges rarely to be wanted, but Money to pass Vagrants is always wanted; this Exception over-ruled.

As to the Second Exception, not necessary or proper; for it is to be done by Justices in Sessions, and so being an Act of the Court need not be signed by the Justices.

As to the Case of discharging Apprentices, it is expressly directed to be under the Hand and Seal of four Justices, and though at the Quarter-Sessions, yet not the Act of the Court, that is only the Place where it is to be done.

Third Exception makes the Order bad and illegal; it neither appears for what Time nor how to be accounted for.

The Legislature intended Quarterly, or at farthest half-yearly Assessments; and the Method should have been, that so much Money should be raised, that at the first Quarter the chief Constable should have enough to have served for Half a Year, and then raise Quarterly after, and so serve each Quarter.

But this puts it in the Power of Justices to tax the County at their Pleasure.

It was Objected by Mr. Justice *Page*, that Inhabitants may be charged at any Distance of Time, which is an unanswerable Objection.

This should be taken according to the Taxation for Relief of the Poor, by the 43d of *Eliz.* Weekly or *otherwise;* which though it leaves the Matter at large, yet held, that Poor's Rate should be collected Monthly, or by a Monthly Rate at farthest, and on this, was determined, 2 *Salk.* 531. *Tawny's* Case, if this should be allowed, a future Charge might be made of a very large Sum upon future Inhabitants.

Another Exception not taken, that the Money is to be paid into the Hands of the Receiver or Treasurer.

There is no Authority for this, the contrary is prescribed, that the chief Constable shall receive the Money and have a Quarter's Payment in his Hands, etc. that he should account to the Treasurer.

Now according to this, the Act Cannot be complied with, it overturns the Method prescribed by the Act.

The Chief Constable to account, who is to account now? not the Chief Constable, for he has not the Money, but the Treasurer.

This Error seems to arise from a Misapprehension of the 11th and 12th of *W.* 3. which directs a Receiver, but no such Direction by the 12th of *Anne*, and the Reference to raise Money by such Ways and Means, etc. only relates to the raising the Money; therefore this is inconsistent with the Act? and upon the whole, the Order must be quashed on these two last Exceptions.

Michaelmas, the Fourteenth of *George* the Second.

The King *against* Obrian.

IT was moved in Arrest of Judgment to this Indictment. The Facts charged in the Indictment are not Offences at Common Law.

1 ***Publishing*** a forged and Counterfeit Affidavit as a true one, ***knowing*** it to be false and counterfeit.

2. ***Publishing*** a false Certificate of the Minister and Churchwardens as a true one, ***knowing*** it to be false. And by these Artifices procured a Sum of Money to be paid (by the Paymaster of the Pensions to Officers Widows) to one ***Burrow.***

Bract. Lib. 3. *de Corona. Fleta, Lib.* 1 *c.* 22.

Statute of 5 *Eliz.* of Forgery, does not extend to this Case. Publishing Forgery is no Crime at Common Law, only the Forging it.

33 *H.* 8. might have reached *Burrow* who received the Money, but not Defendant. Lord *Coke* upon that Statute.

It is not averred, that it was a Counterfeit Affidavit, only by way of Argument. An Indictment at Common Law would not lie for forging this Affidavit. *Wood's Instit.* 414. *Cro. Eliz.* 554, 166. *Yelv.* 146. 3 *Bulst.* 255.

Secondly; This does not appear to be an Affidavit, for at Common Law the Justice had no Authority to take such Affidavit; therefore it is void. *Trem. Entries*, The King against *Rutter, Ibid.* 128.

The Court cannot take judicial Notice that it is an Affidavit. 1 *Syd.* 142.

Mr. *Attorney General on the other Side:* Is not publishing a Forgery a Crime, when the Forgery itself is so?

Was it ever doubted, that Publishing a Libel was a Crime as well as writing it?

It is said this is not a Deed, therefore no Crime; the Case in *Yelverton* is denied to be Law.

The King against *Ward* for forging a Receipt of the Duke of *Bucks*, held an Offence at Common Law.

The whole Fact is charged as one Crime.

It is said, there is no Averment that it was forged; but the contrary appears in many Parts of the Record.

As it is said that *A.* was a Justice of Peace, the Court will take Notice that he has Power to take an Affidavit.

The 33 *H.* 8. *c.* 1. Lord *Coke* says, after that Statute it was *rarely* laid at Common Law; which shews it still might be so. The King and *Hayes* was at Common Law.

2. It is an Offence at Common Law. *Hil.* 14. *G.* 1. The King against *John Ward* in that Case.

It was objected, that it was no Offence at Common Law; in answer to which the following Cases were cited, *Style* 12. 5 *Mod.* 137. *Salk.* 342. 1 *Sid.* 142. *Salk.* 406. *Hil.* 32 *Car.* 2. *Roll.* 5. *Raym.* 81. 1 *Syd.* 7. 1 *Leo.* 170.

And the Court held, that though there was no Authority in Point, yet in Reason it is an Offence at Common Law; and held the Case in *Cro.* not Law, and Judgment against Defendant.

But it is said, the *Forging* it might be a Crime, yet the Publishing it not.

Answ. It is laid, *knowing it to be forged;* and it was necessary to prove it was forged.

On an Indictment for Perjury it might be necessary to shew that the Justice had Authority, but no Occasion to do it here, for no Oath is administered.

Lord Chief Justice: The Case of the King and *Ward* is truly cited; and this very Point, that it was an Offence at Common Law, was determined; and therefore whether within the Statute of False Tokens, or not, is not material. If it appears it can be no Prejudice to any one, it's no Offence at Common Law; and it was also then held, that the Statute created no new Offence, but only added a Punishment.

Quære therefore, whether the Facts in this Indictment amount to an Offence at Common Law?

Surely publishing a Forged Writing, knowing it to be so, in order to commit a Fraud, is an Offence at Common Law; and that is the present Case.

Publication of a Libel is an Offence.

It is charged that *Burrows* received the Money by Virtue of this forged Affidavit and Certificate.

I think clearly the Offence is Indictable, and therefore I am of Opinion that Judgment shall go for the King. Judgment was given for the King.

N. B. The Case of the King against *Ward* was for forging an Order under the Hand of the Duke of *Bucks*, for the Delivery of a certain Quantity of *Allum*, of which Defendant was convicted, and set in the Pillory.

Hilary, Seventh of *George* the Second.

The King *against* Miller.

CONVICTION of the Defendant upon 3 and 4 *W.* and *M. c.* 10. for killing a Deer in his Majesty's Forest of *Waltham;* thirty Pounds Forfeiture by the Act.

Three Exceptions were taken for Defendant.

First Exception; It is laid to be Killed in the Parish of *Barking* in the County of *Essex*, and the Witness is of that Parish; and likened it to the Case of an Informer intitled to a Part of the Penalty, where his Evidence is not allowed; and in this Case the Witness being of the Parish, and one third of the Penalty being given to the Poor of the Parish, insisted that the Witness was not a legal Witness, being either intitled to a Part of the Penalty, as being

a poor Man of that Parish, or eased in his Payment as one who contributed to the Poor's Rate.

Second Exception; That the Jurisdiction of the Justices did not appear, but by their own Words, which would not do. The King against *Johnson*, *Hil.* 6 *Geo.* 1.

Third Exception; That the Justices are described as Justices to keep the Peace, and also to hear and determine divers Felonies, etc. but not said assigned.

Mr. *Fazakerly on the other Side:* As to the first, said that this Objection, if it was to prevail, no one could be a legal Witness, and was going on, when the *Chief Justice* said, there was no Occasion, for this did not come into the Parish in Ease of Rates, but only as a Bounty.

As to the second, said they were the Words of the Witness.

As to the third, they have described the Justices as Justices of the Peace, which is all that is required by the Statute, and they need not have gone further.

By the whole Court: The Conviction was confirmed.

Hilary, the Thirteenth of *George* the Second.

Parish of Southwold *against* Yoxford.

THE Sessions discharge an Order of Two Justices, removing *A.* from *Southwold* to *Yoxford*, on Appeal; and state specially that the Pauper took a House in *Southwold* and agreed to pay ten Pounds a Year for it, and the Landlord agreed to make new Buildings. These improvements were never made, and the House worth but six Pounds a Year; the Pauper never lay in the House, but his Wife and Family did five Nights; and his Goods were there above forty Days until taken in Execution. The Wife kept the Key till *Michaelmas*.

Lord Chief Justice: The Sessions must judge upon the Facts; it is stated, that the Agreement was for ten Pounds a Year, this is Evidence of the Value; but Justices of the Peace have a right to enquire into the real Value, and that is but six Pounds, and there is no Fact to shew this ten Pounds a Year. A mere Reservation of Rent is not suffieient to gain a settlement; therefore no Settlement in *Southwold*, and quashed the Order of Sessions which discharged the Order of two Justices, and confirmed that of two Justices.

Michaelmas, the Fourteenth of *George* the Second.

The King *against* the Inhabitants of Shadwell.

PRESENTMENT of a Justice of Peace, that a Highway in the Parish of *Shadwell* was out of Repair, being removed by *Certiorari*, the Defendants plead, that *A. B.* was bound to repair it *ratione tenuræ*. It was replied, that the Inhabitants ought to repair, and thereupon Issue was joined, and a Verdict against the Defendants; upon which it was moved in Arrest of Judgment, that this was an immaterial Issue, and that the Issue ought to have been upon the Repair *ratione tenuræ*.

It was further objected, that it appeared to be a Presentment of the Jury, that the Justice did present this Highway being out of Repair, etc. 5 *Eliz. c.* 13. §. 9. gives Justices of Peace this Authority. 2 *Sand.* 157. *Hawk. Pl. Cor. Vol.* 2. 252. *Hale's Hist. Vol.* 2. 2 *Lev.* was insisted to be an Authority for Defendant upon the first Point; for if the first Traverse had been material, a Traverse could not be taken upon it, as is in that Case.

The Inhabitants being by Law obliged to repair of Common right, therefore the Issue ought to be, whether another was bound to repair.

Lord Chief Justice: The Verdict being taken, that the Inhabitants who have pleaded ought to repair, is wrong; but that is not the Question now.

Upon Presentment of a Justice upon a View, they cannot traverse that the Way is not in Repair.

But this is only a Presentment of the Jury, that the Justice had presented, which is not sufficient Foundation for this Proceeding, therefore I think that a good Objection.

Secondly; I think the Issue should be upon the Repair *ratione tenuræ*, for the Inhabitants

to do it of common Right, for if found they were not to repair, it would not have determined the present Question; though as found it may, like the Case of Payment pleaded before the Day, to a Bond is good, if found for Defendant, but ill if found against him.

Mr. *Justice Page:* That the Presentment is not good, for it should be brought into Court by the Justice, not by the Jury; upon Not guilty he cannot give in Evidence that another is to repair, only whether in Repair or not.

Mr. *Justice Probyn:* This is neither a Presentment of the Jury nor the Justice, as it ought to be; though this Issue is Informal, yet the Merits are found according as the Verdict is, against the Parish.

Mr. *Justice Chapple:* This is rather an Indictment than a Presentment, but thought the Objection very strong.

All the Court agreed to arrest the Judgment upon the Objection upon the Presentment; as to the other, gave no Opinion.

Hilary, Eleventh of *George* the Second.

The King *against* Graves.

ORDER upon Defendant to pay three Shillings *per* Week to *Betty Lemon* as his Daughter.

First Objection; The Money is ordered to be paid to the Overseers of the Poor, whereas it should be to the Party, by the Statute 43 *Eliz.*

Second Exception; That it is so long as she shall be chargeable, but does not limit it to so long as he shall be of Ability to maintain her.

Third Exception; It does not appear she is an Inhabitant of the Parish, only that she is chargeable to that Parish.

Hil. 12 *Anne*, The King against the Inhabitants of *Manchester*, this Exception taken, and the Order quashed.

Lord Chief Justice: This differs from the Case of Bastardy, the Statute gives a very large Power to Justices.

To first Exception, it appears the Person was chargeable to the Parish, and I think this Payment must be to the Officer, for the Use of the Pauper, and the Justices may order it in such Manner as they shall think proper, therefore well.

To the third, it is said she was actually chargeable, and that is what gives the Jurisdiction to the Justices.

To the second, he is to pay no longer than he is able; and he cannot get rid of this Order so long as she is chargeable, for it is in the Nature of a Judgment; therefore as to this, thought the Order Ill.

Mr. Justice *Page:* It is directed to the Officers to be paid to her Weekly; thought that well enough.

If this should be understood to be a Lien for Life upon him, whether he is able or not, should think it Ill, but doubted whether it is so or not.

Mr. Justice *Probyn* thought the first Objection good, for there is no Order upon the Parish Officer to pay that sum to the Party.

The Parent is to relieve the Child in Ease of the Parish, but not to pay any thing to the Parish.

Mr. Justice *Chapple* thought it good, as to Paying the Money to the Parish Officer.

The Act does not direct to whom it shall be Paid, but thought the Justices might order that, and he is unfit to pay to the Child; for the Act supposes a want of due Affection in the Parent towards the Child.

As to the Objection, not limiting the Payment to the Ability of the Father, I thing it should be so, for he is by Law no longer bound to pay.

Hilary, the Thirteenth of *George* the Second..

The King *against* Nunos.

INDICTMENT for fraudulently procuring a Note from *A. B.* by false Tokens, which was set out to be by falsely affirming that there was a Person in the next Room that would pay the Money due upon it, and by that Means getting the Note, etc. whereas in fact there was not any such Person in the next Room, etc.

It was moved in Arrest of Judgment, that this was not an Offence for which an Indictment would lie; that the first Count was only for procuring a note to be delivered to Defendant by a false Affirmation not a false Token.

Court: Here is not any Offence for which an Indictment will lie, and cited *Salk.* 379, as a Case in Point.

In the second Count it is charged to be a false Token, but that is tied up to the same Fact as in the Former Count, and no Description of any other; therefore we think that Averring it to be by false Tokens, without shewing what those false Tokens were, is not sufficient, 2 *Cro.* 20 *Hale's Pleas of the Crown* 265. 1 *Lev.* 299. *Mod. Cases*, The King against *Macarty;* and the Judgment was arrested.

Trinity, Thirteenth and Fourteenth of *George* the Second.

The King *against* Westbear.

SPECIAL Verdict upon an Indictment for stealing certain Parchment Writings, which were Commissions out of the Court of Chancery; this was argued last Term; and now it was insisted it was Petty Larceny.

Larceny is taking the Goods of another with Intent to steal them. *Br. Lib.* 3. *Briton.* 22. *Fleta, c.* 38. *fo.* 54. 3 *Inst.* 37.

Lord *Coke* says it must be *Personal* Chattels, but that I take to be an Exception from the general Rule.

The Verdict finds they were taken with an Intent to steal, which is necessary to make it an Offence; and I agree that it must be the Property of some Person, and here it is found to be the Property of the Crown.

It was objected that there was *no Fact stated* that shews it was taken with an Intent to steal, but it being found that it was with an Intent, that is sufficient, without stating the Facts which induced them to find it so.

Second Objection; That it was not the Property of any Person; but this also is found by the Jury, and the Court is bound by that finding, it being found as Fact, not Law.

It must be the Property of the Crown; because a *Record.* 3 *Inst.* 71, 72. *Hale's Hist.* 650.

When it is made a Record it becomes the Property of the Crown, as the Rolls of a Manor are the Property of the Lord of the Manor. *Jus Proprietatis* and *Jus Possessionis*, 3 *Inst.* 108.

Indictment for taking the Goods *Parochianorum* is good; so for *Bona Ecclesiæ. Stamf.* 25 *b. Dalt.* 373.

Thus the Law vests a Property in those that cannot properly be said to have any, only for the Sake of punishing Offenders.

The *Jus Possessionis* is in the Officer that keeps them, and he is punishable for negligently keeping of them.

8 *H.* 6. it is said, shews this was not Felony at Common Law.

That Acts sometimes are made to declare what the Common Law was before, as appears by Lord *Coke* upon this very Statute, of *R* 2. against the Judges that rase a Record. *Hale's Hist.* 646.

It has been said this is a Record, and therefore cannot be stolen, for it is what every one has a Right to Resort to.

Secondly, That it relates to Land, and therefore the Taking it cannot be Felony.

Suppose the Books of a Publick Company were stolen, would not that be Felony?

As to Commissioners of Sewers, Treasure Trove and other Cases, that were mentioned, there is no Property. I agree, stealing Writings relating to Land, is not Felony, but that is not the present Case; for they are considered as Part of the Realty, and descend to the Heir; but this does not, it is no Charter or Evidence, and though it does relate to Realty, yet goes not along with it.

Mr. Serjeant *Barnardiston on the other Side:* There is no Case of any Indictment of Felony for stealing a Record, *Co. Litt.* 8. and if no such Case ever was, it is an Argument that it does not lie.

First, From the Definition of Larceny.

Secondly, That it cannot be committed by taking Records.

No Felony of Chose in Action. 2 *Geo.* 2. *c.* 25. § 3.

10 *Ed.* 4. 14. *b.* there can be no Felony of Charters relating to Land.

Larceny cannot be committed of Things whereof no Man has a determinate Property at the Time of taking. *H. P. C.* 506.

Records are in the Nature of Choses in Action, nor can any one have a determinate Property in them; for the Publick have a Right to use them, and he that keeps them cannot refuse them, nor can he destroy them; which every Man may do with his own Property.

Thirdly, This plainly relates to Land.

As to its being found, that the Property is in the King, if Records are in their Nature such Things as are not capable of being the Property of any Person, it must be rejected, as finding contrary to the Premisses.

Lord Chief Justice: The Definition of Larceny now is, according to Lord *Coke* and Lord *Hale*, a Taking the mere Personal Goods of another, with a felonious Intent. Therefore there must be a Property somewhere, either Special or General, without which the Taking cannot be Felony, as Things *ferœ naturæ*.

I shall not give any Opinion, whether these Records are the Property of any one; but as these are not mere Personal Chattels of any one, it cannot be Larceny; for it is according to the Case in *Ed.* 4. Things *concerning or relating* to Inheritance, or Chattels real. *Dalt.* 373.

Till a late Statute, taking Lead fixed to Houses was not Felony.

The Things mentioned in this Indictment, clearly relate to the Lands, and are Evidence concerning it; therefore I am of Opinion, for this Reason, it is not Felony.

Mr. Justice *Page:* The Indictment is for taking a Parchment, *purporting* to be a Commission, etc. which I think uncertain; thought the Property not in any Person.

If it concerns any thing it concerns Land, and therefore thought the Indictment would not lie.

Mr. Justice *Probyn* was Clear of Opinion, that this related to Land; that it was an Evidence of the Title of which every Owner had Right to make use of; therefore concurred for the Defendant.

Mr. Justice *Chapple* agreed. 2 *Roll. Abr.* 58. and 8 *Coke, Cayley's* Case.

Then it was moved that the Prisoner might give Security for his Appearance, upon which was cited the King against *Gray*.

Lord Chief Justice: Quære whether the Court may not give Judgment for the Misdemeanor, though not for the Felony. 2 *Hawk.* 240. Remanded till he could find Bail.

Hilary, the Fourteenth of *George* the Second.

Parish of Thornton *against* Parish of Sherborn.

A CERTIFICATE Person married a second Wife after he came to *Sherborn*, by whom he had the Pauper, and the Pauper was hired to and served *Francis Pope*, who lived at *Sherborn*, in Order to learn the Trade of Making Button Moulds, for a Year and a Quarter, and received Wages; but lay and dieted at his Father's House; his Wages were Weekly, and *Pope* was servant at that Time to the Father.

Quære, whether he gained any Settlement by such Hiring and Service?

It was insisted he did not, for he remained Part of his Father's Family, and being not removable, because of Certificate, till actually chargeable, it would be inconvenient if such kind of Service should gain a Settlement.

On the other Side it was said, Though *Pope* was Servant to the Pauper's Father, yet he might take a Servant, and if there is such Contract as the Act requires, it is sufficient to gain a Settlement; and Wages paid Weekly makes no Difference, though a Certificate Man can gain no Settlement, yet before 12 *Anne* his Servants might, and that Act is only as to Apprentices and Servants, therefore his Children may still gain Settlements as other Persons may.

In Reply, the 9th and 10th of *W.* 3. *c.* 30. was cited, and that if the Pauper is a Certificate Person, by 3 and 4 *W.* then he cannot gain a Settlement there, unless he rents ten Pounds *per Ann.* or serves an annual Office.

Children born *after* Certificate are within the Certificate, as much as those born *before*, and then they cannot gain a Settlement by Service.

This Service is not sufficient to gain a Settlement, for it is not the kind of Service the Statute intended, only an Agreement between the Father and *Pope*, that he should teach the Son this Business.

As *Pope* could not gain a Settlement by serving the Father, it would be strange if the Servant of *Pope* should gain a Settlement by serving him.

Lord Chief Justice: First Objection is, That the Pauper is not capable of gaining a Settlement.

Second Objection; That if he is, that here is not such a Service as will gain a Settlement.

But I think if he is capable of gaining of it, here is sufficient to do it, for it is not stated that *Pope* was a Servant to the Certificate Man, but only that he was hired to work for him, and that he was an Housekeeper and settled there.

From the Words of the Statute it seems plain to me, that the Children born after, are included in the Certificate; because the Parish giving it, is bound to receive them; but then it says, *unless they have gained Settlements*, without confining it to the manner of gaining it, as a Certificate Person himself is restrained.

The same Term.

The King *against* Gardiner.

THE Conviction stated, that the Defendant not being qualified, unlawfully had and kept in his Custody a Gun, being an Engine for the Destruction of Game, and this coming in the Paper after Argument, it was quashed.

This Conviction is grounded on 5 *Anne*, *c.* 14. §. 4. the Words of which Statute are, That if any Person, not qualified, shall *keep or use* any Greyhounds, Setting-Dogs, Hays, Lurchers, Tunnels, or any other Engine to kill or destroy the Game, etc. so that in this Statute the Word *Gun* is not mentioned, as in the 22 and 23 *Car.* 2. *c.* 25. by which Lords of Manors are impowered at their Discretion, to seize Guns; and if a Gun is included in this Statute, it must be under the general Word *Engine.*

It is said, a Gun is a proper Engine, and generally used for this Purpose, and that the bare Keeping of it alone is a Crime; but if the Statute should be extended so far as to make the keeping of everything Penal, because it may be used for killing Game, it may be hard to say what a Man may safely keep in his House.

The Things specified in the Statute are such as in their Nature are almost solely applicable to the Destruction of Game, and therefore it may be probable, the Legislature intended a general Prohibition to all unqualified Persons against the Keeping them; but a Gun is a very useful and necessary thing in a House, both for Defence, and to prevent Birds and other rapacious Animals from destroying Corn or other such Things; for this Purpose any Man may lawfully keep a Gun in his House, and though it may be applied to an unlawful Purpose, yet it by no Means follows, that it is kept for such an End, unless that be manifested by some Act done, which shews it is kept to destroy the Game. The whole Charge in the Conviction is, that the Defendant kept a Gun which was capable of being used in the Destruction of Game; and what Offence can that be, unless the Parliament designed that no Weapon should be kept in

a Man's House for his Defence? It is said, this Conviction is founded on the Confession of the Party, who had nothing to say in his Vindication, and therefore it must be taken the Gun was kept for an unlawful End. But this Inference can by no Means be drawn; a Man is accused of that which is no Crime, and therefore confesses the Fact perhaps as being conscious of his own Innocence, and that therefore such a Confession cannot hurt him, and though he has acknowledged only the doing what he might do, the Consequence attempted to be drawn is, that he has done something which he might not do. Surely this is an unfair Way of Reasoning. *Easter*, 3. *Geo.* 1. The King against *King*. The Conviction set out, that the Defendant *Quoddam Tormentum existen' machinam ad destruendum feras, etc. custodivit;* and Lord *Parker*, and the Justices *Powis and Pratt* seemed to be of Opinion, that by the Word a *Gun*, merely as such, was not included, but only such Instruments as in their own Nature were designed for killing Game, as Hare Pipes, etc. Mr. Justice *Eyre* indeed differed.

M. Justice *Page* said, he remembered a Conviction on this Statute quashed for keeping a greyhound; because not alledged to be kept for the killing the Game, and yet that Creature is enumerated in the Act, and in its Nature properly adapted to that Use only.

Mr. Justice *Chapple* said, he thought Conviction for keeping *Lurchers*, *Hays*, etc. would be wrong, unless it was alledged they were kept to destroy Game. So the Conviction was quashed.

Mr. *Solicitor General* in his Argument cited the King and *Filer*, *Hil.* 8 *Geo.* 1. which was a Conviction for keeping a *Lurcher*, and though it was objected the bare Keeping was no Offence without using it, yet the Conviction was confirmed, because of the disjunctive Words *keep or use;* by which the Court conceived the bare having it in his Custody, being unqualified, was criminal.

Trinity, Nineteenth of *George* the Second.

The King *against* the Inhabitants of Hipperholm.

ONE *Robert Cat* was removed to *Hipperholm*, which Order, upon Appeal, was confirmed, the Sessions stating the Case specially, *viz.* that one *Mary Cat* about —— Years ago, being big with Child, was sent with a Certificate from *Shelf* to *Hipperholm* in *February*, and in *March* following was delivered of a Bastard Child; the Justices returned the Certificate with the Orders, the Substance of which Certificate was, that the Inhabitants of *Shelf* owned said *Mary* to be Settled at *Shelf*, and engaged to provide for her and her Child, whenever they, or either of them, should be chargeable, *but did not say the Child of which she was ensient, nor was any other Child mentioned by Name;* nor did the Sessions state that she had not a Child born at the Time of her Certificate.

It was urged, that had there been, or could the Certificate have meant any other Child but that of which she was ensient, it would have owned the Child to be an Inhabitant as well as the Mother, and have named its Name, but as it did not, and the Woman was visibly a-breeding when removed, the Certificate must mean that Child. The Hardship was likewise argued of Parishes not being able to prevent the Birth, being under a Certificate, and the Cases of Children born, pending illegal Removals, were also urged. To which it was answered, that the Certificate Act included only legitimate Children, and the Case of the King against the Inhabitants of *Lidleach* was cited and relied upon, which was, "that a single Woman being removed to *Lidleach* by Certificate, a little more than a Year after had a Bastard; and held that the Bastard was settled where born, notwithstanding the Certificate."

By the Court: It seems to be agreed, that had the Child been described in the Certificate, or had the Justices found that the Woman had not any other Child at that Time, so as to have shewn for a Certainty that the Certificate must mean the Child *in Ventre*, it would have been sufficient to have charged the Parish giving the Certificate; but as every Certificate in Point of Law is considered as a special Contract, and as Certificates in General only regard legitimate Children, therefore this Child must be settled where born, and not under the Certificate.

Trinity, the Twentieth of *George* the Second.

The King *against* The Inhabitants of Hedcorn, Kent.

ORDER by two Justices for Removal of *Richard Burden* and *Mary* his Wife, *John*, *Elizabeth*, *Hannah* and *Mary Burden* their Children, from *Hedcorn* to the Parish of *Maidstone*, who had given a Certificate to *Hedcorn*, acknowledging the said *Richard Burden* and *Mary* his Wife to be legally settled in the Parish of *Maidstone*, which Certificate was dated the 20th of *January* 1730. and in the usual Form; *Maidstone* appealed to the Quarter-Sessions; and upon hearing the Merits of the Appeal the Sessions confirm the original Order as to *Richard Burden* the Husband; but it appearing to the Court that the said *Richard* in 1715 did intermarry with *Mary Lee* now living, and who appeared in Court, and also that the said *Richard* on the 7th of *October* 1730, intermarried with *Mary Broomhall*, who was the Person removed by the original Order, by the Name of *Mary* the Wife of *Richard Burden*, and that he on the 20th of *January* following, got a Certificate from *Maidstone* in due form, and also that the Churchwardens and Overseers of *Maidstone* at the Time of giving said Certificate, believed the said *Mary Broomhall* to be the lawful Wife of the said *Richard Burden*, and they not knowing he had any other Wife, and also on the Oath of the said *Mary Lee* the Lawful Wife of the said *Richard Burden;* and that three Children of the said *Richard Burden*, by the same *Mary*, were, since the Certificate was so given, removed to the Parish of *Maidstone*, and that two of her Children were put out Apprentices by the Parish of *Maidstone*, and also that *Richard Burden* and *Mary Broomhall* his then supposed Wife, after the Certificate given, delivered the same to *Hedcorn*, where they lived as Man and Wife from that Time till the Removal, and had the four Children removed by the original Order, born during their Residence there, who have gained no Settlement since, and two of the Children have received Relief from *Maidstone* as their own Paupers, and that *Mary Broomhall* hath gained no other Settlement in *Maidstone*, and thereupon quashed the original Order, as to *Mary* the Wife of the said *Richard Burden*, and also as to the four Children removed by the Order.

It was now moved to quash that Part of the Order of Sessions, which quashed the original Order as to the Wife and Children, upon a Supposition that the Parish of *Maidstone* was concluded by the Certificate, and could not now controvert the Question, Whether the said *Mary* was legal Wife or not? and cited a Case, the King against the Inhabitants of *New Windsor* in *Trinity* Term in the 5th Year of *Geo.* 1. to which it was answered, That we allow of this Certificate in its fullest Extent.

There should have been no Parol Evidence allowed at the Sessions to identify the real Wife.

Supposing it is an Estoppel, yet it cannot conclude us here, *Co. Lit.* 456. and this differs this Case from that of *New Windsor* and *Waltham*, 5 *Geo.* 1. A Man and Woman live as Man and Wife, and had Children, and the Certificate being given to them as such, held the Certificate was an Estoppel, and the Legality of Marriage out of the Question; but in this Case the Certificate was given to a real Wife.

The Parish of *Maidstone* are content to maintain the lawful Wife and his Children; it cannot be expected the Parish by the Certificate will be forced to take two Wives, and different Children.

To which it was replied, If an Estoppel can be introduced, it must be on the Parish that gave the Certificate, and Estoppel on Estoppel sets every thing at large.

An Instrument not signed by *Hedcorn* cannot bind *Hedcorn;* the Case of *New Windsor* went further than we need go in this Case.

A Certificate concludes as to all Parishes. *Salk.* 535.

All Parties are bound to receive, and that upon the Credit of the Parish that gives the Certificate.

Objected here are two Wives.

In the Case of *New Windsor* they received but one, and that not his Wife. The Woman is also certified to be a legal Inhabitant of *Maidstone*, and the Parish that certifies must take Care for whom they certify, and their Neglect must not fall on a third Parish.

By the Court: The Motion is to quash the Order of Sessions, and to confirm the original Order. Pauper *Richard* and *Mary* his Wife certificated from *Maidstone* to *Hedcorn*. It appears plainly by the State of the Case, that *Mary Broomhall* was the Person certified as his Wife, and *Maidstone* relieved her; but that will not differ the Case, the Certificate being the only thing material.

The Doctrine of Estoppels was used in *New Windsor*, and held that the Case was not to be considered on the Foot of Estoppels. A Certificate is in Nature of an Adjudication, that the Person belongs to the Parish that gave the Certificate; and in the Case of *Honiton* and St. *Mary Axe*, it was said by Mr. Justice *Powel* that a Certificate was like an Acknowledgment on Record, and thereby the Party is owned to be legally settled there, and that they will provide for him; and as all other Parishes on this Certificate are bound to receive them, so the Parish that certified is concluded as to all other Parishes. The Parish has received her as his Wife, and no material Difference between this Case and the Case of *New Windsor*.

The Child of a single Woman who was a Certificate Person not to be removed with the Woman; but if a Man and Woman is certified as Man and Wife, though not legally so, and the Children illegitimate, yet that shall not make any Difference; and the Rule was made absolute to quash the Order of Sessions, which quashed the Order of two Justices as to the Wife and Children, and the original Order was absolutely confirmed.

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